NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
LITTERA SCRIPTA MANET
1985

Federal Register

6–14–07 Thursday
Vol. 72 No. 114 June 14, 2007

Pages 32773–33146

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

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

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

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

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

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

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

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

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, July 17, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 114

Thursday, June 14, 2007

Separate Parts In This Issue

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.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 72, No. 114

Thursday, June 14, 2007

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27753; Directorate Identifier 2007–NM–022–AD; Amendment 39–15096; AD 2007–12–18]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ–170( ) aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologacão Aeronáutica/Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 19, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 19, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 5, 2007 (72 FR 16747). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ–170( ) aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologacão Aeronáutica/Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The MCAI requires inspection of the fuel quantity probes harnesses and correct reassembly if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a **Note** within the AD.

Costs of Compliance

We estimate that this AD will affect 76 products of U.S. registry. We also estimate that it will take about 27 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $164,160, or $2,160 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–12–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15096. Docket No. FAA–2007–27753; Directorate Identifier 2007–NM–022–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; certificated in any category; serial numbers 17000005 through 17000013, 17000015, 17000016, 17000018 through 17000116, 17000118, and 17000119.

Subject

(d) Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ–170( ) aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologacã to Aeronáutica/Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The MCAI requires inspection of the fuel quantity probes harnesses and correct reassembly if necessary.

Actions and Compliance

(f) Within 6,000 flight hours after the effective date of this AD, unless already done, make an inspection in the fuel quantity probes harnesses installed on both wings and reassemble them, as applicable, as described in EMBRAER Service Bulletin 170–28–0011, dated April 26, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–01–02, effective January 15, 2007; and EMBRAER Service Bulletin 170–28–0011, dated April 26, 2006; for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 170–28–0011, dated April 26, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html*.

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11201 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25896; Directorate Identifier 2006–NE–33–AD; Amendment 39–15093; AD 2007–12–15]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–10E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for GE CF34–10E series turbofan engines. That AD currently requires removing the fuel inlet strainer from main fuel pump (MFP) part number (P/N) 2043M12P03, installing a certain replacement flange as an interim repair, remarking the MFP to P/N 2043M12P04, and performing initial and repetitive visual inspections of the main fuel filter. This AD requires removing MFPs, P/Ns 2043M12P03, 2043M12P04, 837600–3, and 837600–4, from service and installing an improved MFP with a different P/N. This AD results from GE determining that the cause of MFP fuel strainer failure is a design problem with the strainer. We are issuing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

DATES: This AD becomes effective July 19, 2007.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7765, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2006–20–06, Amendment 39–14775 (71 FR 57403, September 29, 2006), with a proposed AD. The proposed AD applies to GE CF34–10E2A1, –10E5, –10E5A1, –10E6, –10E6A1, and –10E7 turbofan engines, with MFP P/Ns 2043M12P03, P/N 2043M12P04, 837600–3, and 837600–4, installed. We published the proposed AD in the **Federal Register** on September 29, 2006 (71 FR 57403). That action proposed to require removing MFPs, P/N 2043M12P03, 2043M12P04, 83600–3, and 83600–4 from service and installing an improved MFP, not later than July 31, 2007.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Address the Use of Parts Manufacturer Approval (PMA) Parts

One commenter, Mr. Jack Buster of the Modification and Repair Parts Association (MARPA), states that the PMA part may often share the identical design data with the original part while carrying a completely different part number; therefore, it is possible the AD will not address certain defective PMA parts installed on the aircraft, allowing the unsafe condition to continue.

The same commenter also states that it is possible that a ‘‘new and improved’’ PMA version of the defective original part may already exist in the marketplace. Therefore, specifying one approved part in preference to a different, but also approved part, will impart a commercial advantage to one manufacturer over the other.

We agree. We changed the final rule to add the PMA P/Ns 837600–3 and 837600–4 to the Applicability and replacement requirements of the final rule.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 50 CF34–10E series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $4,226 per engine to upgrade the MFP to a different P/N to make it serviceable. Based on these figures, we estimate the total upgrade cost of this AD to U.S. operators to be $223,300.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ‘‘General requirements.’’ Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ‘‘significant regulatory action’’ under Executive Order 12866;

(2) Is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14775 (71 FR 57403, September 29, 2006) and by adding a new airworthiness directive, Amendment 39–15093, to read as follows:

2007–12–15 General Electric Company: Amendment 39–15093. Docket No. FAA–2005–25896; Directorate Identifier 2006–NE–33–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) This AD supersedes AD 2006–20–06, Amendment 39–14755.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–10E2A1, –10E5, –10E5A1, –10E6, –10E6A1, and –10E7 turbofan engines, with main fuel pump (MFP) part number (P/N) 2043M12P03, P/N 2043M12P04, P/N 837600–3, and P/N 837600–4 installed. These engines are installed on, but not limited to, Embraer ERJ 190–100–STD, ERJ 190–100–LR, and ERJ 190–100–IGW airplanes.

Unsafe Condition

(d) This AD results from GE determining that the cause of MFP fuel strainer failure is a design problem with the strainer. We are issuing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

MFP Removal and Installation

(f) Not later than July 31, 2007, remove MFPs, P/Ns 2043M12P03, 2043M12P04, 837600–3, and 837600–4 from service and install a serviceable MFP.

Definition

(g) For the purpose of this AD, a serviceable MFP is one that does not have P/N 2043M12P03, 2043M12P04, 837600–3 or 837600–4.

Recommended Actions

(h) We recommend that operators avoid performing the actions in this AD on both engines installed on the same airplane at the same time, if at all possible.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) GE Service Bulletin No. CF34–10E S/B 73–0013, dated December 15, 2006, pertains to the subject of this AD.

(k) Contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7765, fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on June 1, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 07–2843 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27849; Directorate Identifier 2006–NM–249–AD; Amendment 39–15094; AD 2007–12–16]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX and Falcon 900EX Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as some stringer reinforcements (F900DX) and some rivets (F900DX/F2000EX) missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft; this situation affects the structural integrity of the fuselage. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 19, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 19, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to allow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 12, 2007 (72 FR 18415). That NPRM proposed to require inspecting skin panels on each side of the fuselage between frames 9 and 10, including holes and structure, where missing rivets are found, adding missing rivets and stringer caps, as applicable, and contacting the manufacturer if the holes are out-of-round beyond tolerance, or if cracks are found, as applicable. The MCAI states that following the incorporation of a design change to the Karman fairing, it has been determined that some stringer reinforcements

(F900DX) and some rivets (F900DX/F2000EX) are missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft. The MCAI was issued to recover the certificated structural strength by adding the missing rivets and checking the condition of the adjacent structure, and to add the missing stringer caps on F900DX (as appropriate). This situation affects the structural integrity of the fuselage and may lead to an unsafe condition if left uncorrected.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect about 2 products of U.S. registry. We also estimate that it will take about 170 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $27,200, or $13,600 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–12–16 Dassault Aviation: Amendment 39–15094. Docket No. FAA–2007–27849; Directorate Identifier 2006–NM–249–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes, S/N (serial number) 82; and Model Falcon 900EX (version F900DX) airplanes, S/Ns 601 through 605; certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that following the incorporation of a design change to the Karman fairing, it has been determined that some stringer reinforcements (F900DX) and some rivets (F900DX/F2000EX) are missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft. This situation affects the structural integrity of the fuselage and may lead to an unsafe condition if left uncorrected. The MCAI was issued to recover the certificated structural strength by adding the missing rivets and checking the condition of the adjacent structure, and to add the missing stringer caps on F900DX (as appropriate). These actions include inspecting the area, including holes and structure, where missing rivets are found, and contacting the manufacturer if the holes are out-of-round beyond tolerance, or if cracks are found, as applicable.

Actions and Compliance

(e) Within 3 months after the effective date of this AD, unless already done, do the following actions: Inspect and repair the aircraft in accordance with the instructions of Dassault Service Bulletin F900EX–308, dated October 18, 2006, for version F900DX, S/N 601 through 605; and Dassault Service

Bulletin F2000EX–133, dated September 28, 2006, for Model F2000EX S/N 82.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137, fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2006–0320–E, dated October 18, 2006; Dassault Service Bulletin F900EX–308, dated October 18, 2006; and Dassault Service Bulletin F2000EX–133, dated September 28, 2006; for related information.

Material Incorporated by Reference

(h) You must use Dassault Service Bulletin F900EX–308, dated October 18, 2006; or Dassault Service Bulletin F2000EX–133, dated September 28, 2006; as applicable, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11203 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27358; Directorate Identifier 2006–NM–270–AD; Amendment 39–15098; AD 2007–12–20]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as electrical arcing due to chafing between a bonding cable and electrical wires in the 120 VU (volt unit) electrical harness, causing the loss of some instruments and loss of one hydraulic circuit pressure (i.e., loss of pressure of one hydraulic circuit). We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 19, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 19, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to allow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 2, 2007 (72 FR 9475). That NPRM proposed to require inspecting the harness installation in the 120 VU (volt unit) electrical harness and, as applicable, restoring correct installation of the bonding cable. The MCAI states that recently an ATR 42 suffered electrical arcing, causing the loss of some instruments and loss of one hydraulic circuit pressure (i.e., loss of pressure of one hydraulic circuit) due to chafing between a bonding cable and electrical wires in the 120 VU electrical harness. The investigation showed that a tubular support had been deformed and therefore impaired the spacing among electrical harness, supports, and cables; the harness was not correctly attached; the size of the harness was increased by addition of cables (for Service Bulletins (SB) or customer modifications embodiments); and the bonding cable was not correctly installed. The MCAI mandates an inspection of the ATR 42 and ATR 72 fleet for correct installation of the bonding cable and restoring correct installation of the bonding cable if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Include Revised Service Bulletins

Avions de Transport Regional (ATR) states that in the NPRM reference is made to Avions de Transport Regional

Service Bulletins ATR42–92–0012 and ATR72–92–1013, both dated July 4, 2006. ATR notes that this corresponds to the original issue of both service bulletins, and adds that those bulletins have been revised to add a reference to European Aviation Safety Agency Airworthiness Directive 2006–0283. ATR states that nothing else has been changed, and suggests that the AD reference Avions de Transport Regional Service Bulletins ATR42–92–0012 and ATR72–92–1013, both Revision 01, both dated December 7, 2006.

We agree to reference Revision 01 of the service bulletins in the AD. We have reviewed Revision 01 of the service bulletins, and the procedures are essentially the same as those in the original issues, as noted by ATR. We have changed paragraphs (e) and (g) of this AD to specify Revision 01 of the service bulletins.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 53 products of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the inspection on U.S. operators to be $4,240, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–12–20 Aerospatiale: Amendment 39–15098. Docket No. FAA–2007–27358; Directorate Identifier 2006–NM–270–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model ATR42–200, –300, –320, and –500 airplanes; all serial numbers up to manufacturer serial number (MSN) 643 inclusive; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, all serial numbers up to MSN 728 inclusive, except MSN 723 and 725; certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that recently an ATR 42 suffered electrical arcing, causing the loss of some instruments and loss of one hydraulic circuit pressure (*i.e.*, loss of pressure of one hydraulic circuit) due to chafing between a bonding cable and electrical wires in the 120 VU (volt unit) electrical harness. The investigation showed that a tubular support had been deformed and therefore impaired the spacing among electrical harness, supports, and cables; the harness was not correctly attached; the size of the harness was increased by addition of cables (for Service Bulletins (SB) or customer modifications embodiments); and the bonding cable was not correctly installed. The MCAI mandates an inspection of the ATR 42 and ATR 72 fleet for correct installation of the bonding cable and restoring correct installation of the bonding cable if necessary.

Actions and Compliance

(e) Unless already done, do the following actions. Within 3 months after the effective date of this AD: Inspect the harness installation in the 120 VU electrical harness and, as applicable, restore correct installation of the bonding cable, in accordance with the instructions given by Avions de Transport

Regional Service Bulletins ATR42–92–0012 (for Model ATR42 airplanes) and ATR72–92–1013 (for Model ATR72 airplanes), both dated July 4, 2006; or Revision 01, both dated December 7, 2006; as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0283, dated September 14, 2006; and the Avions de Transport Regional Service Bulletins specified in Table 1 of this AD for related information.

TABLE 1.—RELATED SERVICE INFORMATION

Avions de transport regional service bulletin	Revision level	Date
ATR42–92–0012	Original	July 4, 2006.
ATR42–92–0012	01	December 7, 2006.
ATR72–92–1013	Original	July 4, 2006.
ATR72–92–1013	01	December 7, 2006

Material Incorporated by Reference

(h) You must use the applicable Avions de Transport Regional Service Bulletins specified in Table 2 of this AD to do the actions required by this AD; unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington; 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/cfr/ibr-locations.html*.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Avions de transport regional service bulletin	Revision level	Date
ATR42–92–0012	Original	July 4, 2006.
ATR42–92–0012	01	December 7, 2006.
ATR72–92–1013	Original	July 4, 2006.
ATR72–92–1013	01	December 7, 2006

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11202 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD; Amendment 39–15095; AD 2007–12–17]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

DATES: This AD becomes effective July 19, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 19, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5527) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That supplemental NPRM was published in the **Federal Register** on March 30, 2007 (72 FR 15075). That supplemental NPRM proposed to require replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. That supplemental NPRM also proposed to add airplanes to the applicability.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 623 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts cost about $1,121 (for each of 30 Model EMB–135BJ airplanes) or $1,788 (for each of 593 remaining airplanes). The estimated cost of the AD per airplane is $1,201 or $1,868. Based on these figures, the estimated cost of the AD for U.S. operators is $1,143,754.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–12–17 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15095. Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD.

Effective Date

(a) This AD becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category; as described in paragraphs (c)(1) and (c)(2) of this AD.

(1) EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; as identified in EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007.

(2) EMBRAER Model EMB–135BJ airplanes, as identified in EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Tube Replacement

(f) Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first: Replace the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with new, improved, non-conductive hoses, in accordance with the Accomplishment Instructions of the service bulletin specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007.

(2) For Model EMB–135BJ airplanes: EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

Credit for Actions Done Using Previous Service Information

(g) Actions accomplished before the effective date of this AD in accordance with the service information specified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—ACCEPTABLE EMBRAER SERVICE INFORMATION

Service bulletin	Revision level	Date
145–28–0023	Original	April 19, 2004.
145–28–0023	01	June 9, 2004.
145–28–0023	02	November 8, 2004.
145–28–0023	03	April 27, 2005.
145–28–0023	04	November 7, 2005.
145–28–0023	05	May 15, 2006.
145–28–0023	06	October 31, 2006.
145LEG–28–0018	Original	April 23, 2004.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(i) Brazilian airworthiness directive 2006–06–02, effective June 28, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j)(1) You must use EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007; or EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(2) EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 2	01	April 20, 2005.
3–20	Original	April 23, 2004.

(Page 2 of EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005, incorrectly shows a revision date of April 20, 2004; that date should be April 20, 2005.)

(3) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11204 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27361; Directorate Identifier 2006–NM–237–AD; Amendment 39–15097; AD 2007–12–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes; and Airbus Model A300–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as explosion risks. Chafing of the fuel pump cables could result in short circuits leading to fuel pump failure, intermittent operation, arcing, and possible fuel tank explosion. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 19, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 19, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to allow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 13, 2007 (72 FR 11302). That NPRM proposed to require modification of the fuel pump wiring against short circuits.

The MCAI states that the FAA has published SFAR 88 (Special Federal Aviation Regulation 88). In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA). Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3,402 kilograms) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks.

The MCAI design review found that fuel pump cables can possibly become chafed in their metallic conduits. The chafing of the fuel pump cables can result in short circuits leading to fuel pump failure, intermittent operation, arcing, and possible fuel tank explosion. The MCAI, which requires modification of the fuel pump wiring against short circuits, is a consequence of this design review.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Refer to Latest Service Bulletin

Airbus requests that we refer to the latest revision of Service Bulletin A310–24–2097. Airbus states that Service Bulletin A310–24–2097, Revision 02, dated May 24, 2007, has been released to operators. Airbus notes that the service bulletin does not introduce any additional work.

We have reviewed Airbus Service Bulletin A310–24–2097, Revision 02, dated May 24, 2007 (we referred to Airbus Service Bulletins A310–24–2097, dated February 15, 2006; and Revision 01, dated October 11, 2006; as appropriate sources of service information for accomplishing the actions proposed in the NPRM). Revision 02 of the service bulletin does not add additional work. Revision 02 of the service bulletin updates the effectivity and introduces minor changes. Therefore, we have revised this AD to refer to Revision 02 of the service bulletin as an appropriate source of service information for doing the required actions.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 205 products of U.S. registry. We also estimate that it will take about 72 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $7,190 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,654,750, or $12,950 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–12–19 Airbus: Amendment 39–15097. Docket No. FAA–2007–27361; Directorate Identifier 2006–NM–237–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310 series airplanes; and Model A300–600 series airplanes; certificated in any category; all certified models, all serial numbers, except for aircraft which have received in production Airbus modification 13118 or Airbus Service Bulletin (SB) A310–24–2097 or A300–24–6094.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that the FAA has published SFAR 88 (Special Federal Aviation Regulation 88). In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA). Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3,402 kilograms) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks. The MCAI design review found that fuel pump cables can possibly become chafed in their metallic conduits. The chafing of the fuel pump cables can result in short circuits leading to fuel pump failure, intermittent operation, arcing, and possible fuel tank explosion. The MCAI, which requires modification of the fuel pump wiring against short circuits, is a consequence of this design review.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 37 months after the effective date of this AD: Modify the inner and outer fuel pumps, route 1P and 2P harnesses in the LH (left-hand) wing and in the RH (right-hand) wing in accordance with the instructions of Airbus Service Bulletins A300–24–6094, dated February 15, 2006; A300–24–6094, Revision 01, dated July 18, 2006; A310–24–2097, dated February 15, 2006; A310–24–2097, Revision 01, dated October 11, 2006; or A310–24–2097, Revision 02, dated May 24, 2007; as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Tom Stafford, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0284 R1, dated February 13, 2007; and Airbus Service Bulletins A300–24–6094, dated February 15, 2006; A300–24–6094, Revision 01, dated July 18, 2006; A310–24–2097, dated February 15, 2006; A310–24–2097, Revision 01, dated October 11, 2006; and A310–24–2097, Revision 02, dated May 24, 2007; for related information.

Material Incorporated by Reference

(h) You must use the applicable service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision	Date
A300–24–6094	Original	February 15, 2006.
A300–24–6094	01	July 18, 2006.
A310–24–2097	Original	February 15, 2006.
A310–24–2097	01	October 11, 2006.
A310–24–2097	02	May 24, 2007.

Issued in Renton, Washington, on June 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11200 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27533 Directorate Identifier 2007–CE–022–AD; Amendment 39–15102; AD 2007–12–24]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries Model DA 42 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Shortly after an engine change, the aluminium fitting attached to the engine gearbox holding lines and fittings of the propeller control system was found to be cracked. This led to a pressure loss in the propeller control system following a control system malfunction and led to an in-flight engine shutdown.

The broken fitting is part of the engine installation and was initially a steel part. It was later modified by the engine manufacturer to an aluminium design.

Investigation determined that the area is critical for cracks due to combination of mass, material and installation torque values.

Diamond Aircraft Industries incorporated with Design Change MÄM 42–184 an additional bracket into production airplanes to improve the installations and prevent vibration cracks.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 19, 2007.

On July 19, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 13, 2007 (72 FR 18598). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Shortly after an engine change, the aluminium fitting attached to the engine gearbox holding lines and fittings of the propeller control system was found to be cracked. This led to a pressure loss in the propeller control system following a control system malfunction and led to a in-flight engine shutdown.

The broken fitting is part of the engine installation and was initially a steel part. It was later modified by the engine manufacturer to an aluminium design.

Investigation determined that the area is critical for cracks due to combination of mass, material and installation torque values.

Diamond Aircraft Industries incorporated with Design Change MÄM 42–184 an additional bracket into production airplanes to improve the installations and prevent vibration cracks.

This airworthiness directive requires the retroactive installation of this bracket for all airplanes, including the airplanes with steel fittings.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 70 products of U.S. registry. We also estimate that it will take about 1.0 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $208 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $20,160 or $ 288 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–12–24 Diamond Aircraft Industries: Amendment 39–15102; Docket No. FAA–2007–27533; Directorate Identifier 2007–CE–022–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to DA 42 airplanes, serial numbers 42.004 through 42.129, 42.177, and 42.AC001, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 72: Engine.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Shortly after an engine change, the aluminium fitting attached to the engine gearbox holding lines and fittings of the propeller control system was found to be cracked. This led to a pressure loss in the propeller control system following a control system malfunction and led to an in-flight engine shutdown.

The broken fitting is part of the engine installation and was initially a steel part. It was later modified by the engine manufacturer to an aluminium design.

Investigation determined that the area is critical for cracks due to combination of mass, material and installation torque values.

Diamond Aircraft Industries incorporated with Design Change MÄM 42–184 an additional bracket into production airplanes to improve the installations and prevent vibration cracks.

This airworthiness directive requires the retroactive installation of this bracket for all airplanes, including the airplanes with steel fittings.

Actions and Compliance

(f) Unless already done, within the next 50 hours time-in-service after July 19, 2007 (the effective date of this AD) or within the next 30 days after July 19, 2007 (the effective date of this AD), whichever occurs first, install the additional steel bracket following Diamond Aircraft Industries GmbH Mandatory Service Bulletin NO. MSB–42–024/3, dated September 19, 2006, which references Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–024, Revision 2, dated September 19, 2006.

Note 1: If the above action was accomplished following the procedures described in Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–42–024/2, dated August 31, 2006, you may take ''unless already done'' credit, and no further action per this AD is necessary.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No: 2006–0277, dated September 06, 2006; and Diamond Aircraft Industries GmbH, Mandatory Service Bulletin No. MSB–42–024/3, dated September 19, 2006, which references Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–024, Revision 2, dated September 19, 2006, for related information.

Material Incorporated by Reference

(i) You must use Diamond Aircraft Industries GmbH, Mandatory Service Bulletin No. MSB–42–024/3, dated September 19, 2006, which references Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–024, Revision 2, dated September 19, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Strabe 5, A–2700 Wiener Neustadt; Fax: **43–2622–26620; or e-mail: *support@diamond-air.at.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on June 6, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11287 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20863; Directorate Identifier 2004–SW–36–AD; Amendment 39–15100; AD 2007–12–22]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires replacing the hydraulic fluid at a specified time interval when operating in cold weather. This amendment is prompted by reports of ice forming due to condensation in some parts of the hydraulic system during cold weather operation. The actions specified by this AD are intended to prevent ice from forming in the hydraulic system resulting in an unintended movement of the flight controls and subsequent loss of control of the helicopter.

DATES: Effective July 19, 2007.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 2007.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on April 7, 2005 (70 FR 17621). That action proposed replacing the hydraulic fluid at a specified time interval when operating in cold weather.

The Direction Generale de l'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified ECF Model AS350 and AS355 helicopters. The DGAC advises of the formation of ice in some parts of the hydraulic system during flights in cold weather and when the hydraulic fluid is highly contaminated by water.

ECF has issued Alert Service Bulletin Nos. 05.00.43 and 05.00.45, both dated April 8, 2004, which specify provisions for replacing hydraulic fluid in cold weather. The DGAC classified these service bulletins as mandatory and issued AD Nos. F–2004–055 and F–2004–056, both dated April 28, 2004, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

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

The one commenter states that the ASB is adequate until Eurocopter sorts out the moisture problem, and changing the fluid every 100 hours or 30 days is wasteful and not necessary, and such action will not get all the moisture out of the system. Therefore, an AD should not be issued.

The FAA does not agree. The ASB is not adequate until Eurocopter sorts out the moisture problem. Generally, part 91 operators are not required to follow an ASB; however, they are required to follow an AD. An AD is issued to address an unsafe condition. This AD requires replacing the hydraulic fluid at the specified intervals to prevent ice from forming in the hydraulic system resulting in an unintended movement of the flight controls and subsequent loss of control of the helicopter. The ASB was written in association with the airworthiness authority in France (DGAC) to address the problem of moisture in the hydraulic fluid resulting in feedback in the system during operations in cold temperatures in Canada. Moisture that is absorbed into the hydraulic fluid is not a function of the type of fluid. Moisture is absorbed into the hydraulic fluid due to heating and cooling of the fluid in the reservoir because the reservoir is vented to atmospheric pressure (humidity). It is not a closed system. Moisture may occur with either MIL–H–83282 or MIL–H–5606 fluid. Normally, there is not enough moisture in the system to cause any problems but occasionally there is enough to cause some feedback in the cyclic control (due to ice crystals forming in cold weather). MIL–H–83282 hydraulic fluid is the preferred fluid and MIL–H–5606 is an alternate. In many climates, the operator cannot use the MIL–H–5606 fluid because it has a lower flash point than the MIL–H–83282 fluid. Therefore, MIL–H–5606 fluid can only be used in colder environments. As a result, the option for the alternate fluid is limited to colder environments.

An ECF ASB is written in association with an AD issued by a foreign authority (European Aviation Safety Agency (EASA) or DGAC). The foreign ASB is in place when the AD is published to require that operators comply with the manufacturer's ASB. The FAA AD follows the requirements placed on other parts of the world by the foreign authority (state of design) if the FAA agrees with those requirements.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for a change in paragraph (b) of the AD to add additional contact information and to revise the total cost impact; we have used a labor rate of $80 instead of $65. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

We estimate that this AD will affect 556 helicopters of U.S. registry, and the required actions will take about:

- 2 work hours to replace the hydraulic fluid per helicopter at an average labor rate of $80 per work hour; and

• $6 for hydraulic fluid each time it is changed.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $92,296, assuming two fluid replacements per year for 50 percent of the helicopter fleet.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–12–22 Eurocopter France: Amendment 39–15100. Docket No. FAA–2005–20863; Directorate Identifier 2004–SW–36–AD.

Applicability

Model AS350B, BA, B1, B2, B3, D and AS355E helicopters, certificated in any category.

Compliance

Required as indicated.

To prevent ice from forming in the hydraulic system resulting in an unintended movement of the flight controls and subsequent loss of control of the helicopter, do the following:

(a) If the outside air temperature in an FAA weather briefing is forecast to be below negative 15 degrees Celsius (5 degrees Fahrenheit) at or below your planned flight altitude and the hydraulic fluid has not been replaced within the past 100 hours time-in-service or within the past 30 days, whichever occurred first, before further flight, replace the hydraulic fluid. Replace the hydraulic fluid by following the Accomplishment Instructions, paragraphs 2.A. and 2.B., of Eurocopter Alert Service Bulletin Nos. 05.00.43 or 05.00.45, both dated April 8, 2004, as applicable.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Ed Cuevas, Aviation Safety Engineer, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) Special flight permits will not be issued.

(d) Replacing the hydraulic fluid must be done by following Eurocopter Alert Service Bulletin Nos. 05.00.43 or 05.00.45, both dated April 8, 2004, as applicable. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 63, Fort Worth, Texas, 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*.

(e) This amendment becomes effective on July 19, 2007.

Note: The subject of this AD is addressed in Direction Generale de l'Aviation Civile (France) AD Nos. F–2004–055 and F–2004–056, both dated April 28, 2004.

Issued in Fort Worth, Texas, on May 25, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–11410 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–37–AD; Amendment 39–15101; AD 2007–12–23]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HS, 369HM, 500N, and OH–6A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model 369A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HS, 369HM, 500N, and OH–6A helicopters that requires inspecting each landing gear fairing support assembly (support assembly), replacing or reworking certain forward and aft landing gear assemblies, and creating an access hole to facilitate inspections and a recurring inspection. A terminating action for the requirements of this AD is also provided. This amendment is prompted by five reports of landing gear strut (strut) failures. The actions specified by this AD are intended to detect a crack that could result in the failure of a strut and subsequent loss of control of the helicopter during landing.

DATES: Effective July 19, 2007.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 2007.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.* This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to add an AD for the specified MDHI model helicopters was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 4, 2004 (69 FR 47040). That NPRM would have required removing all landing gear fairings; determining the number and location of rivets that attach the landing gear fairing support assembly to the landing gear strut; and if three rivets (forward, aft and inboard) are present, replacing or reworking the landing gear assembly. If only the forward and aft rivets are present, no rework would be required by the proposed AD. That NPRM was prompted by five reports of strut failures. Operators of the helicopters with failed struts do not fall into any clear category of service. For example, one was a tour operator in Niagara Falls, New York, and another was a police department operator in Calgary, Canada. In its original design, the fairing support was attached to the strut with three rivets (forward, aft, and outboard). In 1994, the manufacturer released a design change to attach the fairing support assembly with only forward and aft rivets because of the possibility of reduced service life of the strut if the third rivet was located on the inboard side of the strut. Some landing gear struts entered service with an additional rivet hole drilled on the inboard side of the strut. This additional rivet hole results in decreased fatigue strength of the strut and subsequent cracking. That condition, if not corrected, could result in cracking of the forward and aft struts, failure of a strut, and subsequent loss of control of the helicopter during landing.

After issuing that NPRM, we received several comments from 2 commenters and we agreed that we should make some changes to the NPRM. Because some of those changes expanded the scope of the NPRM, we determined that it was necessary to reopen the comment period to provide additional opportunity for public comment. Therefore, a Supplemental NPRM (SNPRM) was published in the **Federal Register** on January 8, 2007 (72 FR 666). The SNPRM revised the NPRM by proposing to mandate both the creation of an access hole to facilitate inspections and a recurring inspection. The SNPRM also proposed excluding from the applicability certain helicopters modified with a certain Supplemental Type Certificate (STC) and provided a terminating action for the proposed requirements. The SNPRM also included clarifying changes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the SNPRM or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except we have expanded the contact address in paragraph (d) in the body of the AD to provide more information to the public and have made minor editorial changes. These changes will neither increase the economic burden on any operator nor increase the scope of this AD.

The FAA has reviewed MD Helicopters Service Bulletin SB369H–244, SB369E–094, SB500N–022, SB369D–200, and SB369F–078, dated April 7, 2000, which describes procedures for determining the number and location of rivets attaching the landing gear fairing support assembly to the landing gear strut. Where three rivets are present, instructions are provided to rework the landing gear assembly and replace any cracked strut assembly.

The FAA estimates that this AD will affect 651 helicopters of U.S. registry. Determining the number of rivets and initially inspecting each affected ''3-hole'' strut and fairing will take approximately 2 work hours, installing a new strut will take approximately 1.5 work hours, and reworking a strut will take 1 work hour. Each repetitive inspection will take 1/4 work hour per strut (1 hour per helicopter for each of 4 struts). The average labor rate is $80 per work hour. Required parts (new struts) will cost approximately $2,838 for each forward strut, $2,574 for each aft strut, and $97 for a modification kit to install an inspection hole. Assuming that each helicopter has an initial inspection, that all 651 helicopters are modified, that 325 helicopters have two struts reworked, that 5 helicopters require 2 new forward struts, and that 2 repetitive inspections are required per year, the total estimated cost of the AD on U.S. operators is about $353,047 ($248,887 for the initial inspections, modification, and parts, and $104,160 for the repetitive inspections).

Regulatory Findings

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

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–12–23 MD Helicopters, Inc.: Amendment 39–15101. Docket No. 2003–SW–37–AD.

Applicability

Model 369A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HS, 369HM, 500N, and OH–6A helicopters, with any of the components listed in the Applicability Table installed, excluding any helicopter with Aerometals strut (part number (P/N) 369XH6001–41, –42, –51, or –52) installed in accordance with Supplemental Type Certificate (STC) No. SR00981LA, certificated in any category:

APPLICABILITY TABLE

Component name	Component part No. (P/N)
Mid Aft Fairing Assembly	369H6200–61, –62, standard gear.
Aft Support Assembly	369H6200–23, –24 (–23 to be reinstalled on the right-hand side and –24 to be reinstalled on the left-hand side, all configurations).
Aft Fairing Assembly	369H92113–91, –92, extended gear.
Aft Filler Assembly	369H92113–131, –132, extended gear.
Aft Fillet Assembly	369A6200–45, –46, standard gear.
Aft Fillet Assembly	369H92113–111, –112, extended gear.
Mid Fwd Fairing Assembly	369H6200–41, –42, standard gear.
Fwd Fairing Assembly	369H92113–81, –82, extended gear.
Fwd Support Assembly	369H6200–23, –24 (–23 becomes right-hand side and –24 becomes left-hand side).
Fwd Filler Assembly	369H92113–121, –122, extended gear.
Fwd Fillet Assembly	369A6200–57, –58, standard gear.
Fwd Fillet Assembly	369H92113–101, –102, extended gear.

Compliance

Required as indicated.

To detect a crack that could result in the failure of a strut and subsequent loss of control of the helicopter during landing, accomplish the following:

(a) Within 4 months, unless accomplished previously, remove all landing gear fairings (fairings) and inspect each landing gear fairing support assembly (support assembly) to determine the number and location of the rivets attaching the support assembly to the landing gear strut assembly (strut assembly).

(1) If three rivets (forward, aft and inboard) are used to attach the support assembly to the strut assembly,

(i) For each FORWARD landing gear assembly, remove the landing gear fillet assembly (fillet assembly), the three rivets, and the support assembly, and clean and dye-penetrant inspect the area in and around the 0.125 (3.18mm) diameter hole in the inboard surface of the strut assembly.

(A) If the strut assembly is cracked, replace the cracked strut assembly with an airworthy strut assembly and install the other landing gear components in accordance with steps (6) through (11) of paragraph C of the Accomplishment Instructions of MD Helicopters Service Bulletin SB369H–244, SB369E–094, SB500N–022, SB369D–200, and SB369F–078, dated April 7, 2000 (SB).

(B) If the strut assembly is not cracked, rework the landing gear assembly and install the other landing gear components in accordance with steps (5) through (11) of paragraph C of the Accomplishment Instructions of the SB.

(ii) For each AFT landing gear assembly, remove the fillet assembly, the three rivets, and the support assembly, and clean and dye-penetrant inspect the area in and around the 0.125 (3.18mm) diameter hole in the inboard surface of the strut assembly.

(A) If the strut assembly is cracked, replace the cracked strut assembly with an airworthy strut assembly and install the other landing gear components in accordance with steps (6) through (13) of paragraph B of the Accomplishment Instructions of the SB.

(B) If the strut assembly is not cracked, rework the landing gear assembly and install the other landing gear components in accordance with steps (5) through (13) of Paragraph B of the Accomplishment Instructions of the SB.

(2) If only two rivets (forward and aft) are used to attach the support assembly to the strut assembly and a third rivet hole has not been drilled in the strut, neither the inspection of the strut assembly nor the rework of those landing gear assemblies is required by this AD.

(b) At intervals not to exceed 100 hours TIS or during each annual inspection, whichever occurs first, for any strut assembly that has a third rivet hole, remove the fairing inspection button plug and clean and inspect the area in and around the rivet hole for cracks using a bright light and a 10x or higher magnifying glass.

(1) If any FORWARD strut assembly is cracked, replace the cracked strut with an airworthy strut assembly.

(2) If any AFT strut assembly is cracked, replace the cracked strut with an airworthy strut assembly.

(c) Installing a strut assembly that has only 2 rivet holes is terminating action for the requirements of this AD.

Note 1: For the Model 369D, 369E, 369F, 369FF, and 500N helicopters, the Handbook of Maintenance Instruction, Servicing and Maintenance, HMI, CSP–HMI–2, Chapter 32, Section 32–10–00, ''Landing Gear Strut Inspection'' pertains to the subject of this AD.

Note 2: For the Model 369A (OH–6A), 369H, 369HE, 369HS, and 369HM helicopters, the Basic Handbook of Maintenance Instructions CSP–H–2, Section 6, ''Landing Gear'' pertains to the subject of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210 for information about previously approved alternative methods of compliance.

(e) The replacements and installations shall be done in accordance with the specified portions of MD Helicopters Service Bulletin SB369H–244, SB369E–094, SB500N–022, SB369D–200, and SB369F–078, dated April 7, 2000. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; 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.

(f) This amendment becomes effective on July 19, 2007.

Issued in Fort Worth, Texas, on June 5, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–11393 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30554; Amdt. No. 3222]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 14, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 2007.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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 Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 1, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
5/22/07	NY	MONTAUK	MONTAUK	7/1798	TAKEOFF MINIMS AND OBSTACLE DP, AMDT 2.
5/23/07	MD	BALTIMORE	BALTIMORE-WASHINGTON INTL THURGOOD MARSHALL.	7/2223	RNAV (GPS) RWY 33L, ORIG–A.
5/23/07	VT	SPRINGFIELD	HARTNESS STATE (SPRINGFIELD)	7/2224	NDB A, AMDT 6.
5/23/07	PA	KUTZTOWN	KUTZTOWN	7/2225	VOR A, AMDT 1A.
5/23/07	TN	KNOXVILLE	MCGHEE-TYSON	7/2226	NDB RWY 5R, AMDT 5.
5/23/07	TN	KNOXVILLE	MCGHEE-TYSON	7/2227	ILS OR LOC RWY 5L, AMDT 8.
5/23/07	PA	POTTSTOWN	POTTSTOWN LIMERICK	7/2228	VOR/DME A, AMDT 3.

[FR Doc. E7–11144 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9330]

RIN 1545–BG66

Built-in Gains and Losses Under Section 382(h)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply to corporations that have undergone ownership changes within the meaning of section 382. These regulations provide guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 14, 2007.

Applicability Date: For dates of applicability, see § 1.382–7T(b).

FOR FURTHER INFORMATION CONTACT: Keith Stanley at (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 382

Section 382 limits, after a more than 50 percent change in stock ownership (ownership change), the amount of a loss corporation's taxable income for any post-change year that may be offset by pre-change losses. The amount of the limitation each year is equal to the product of the fair market value of all the stock of the loss corporation immediately before the ownership change multiplied by the applicable long-term tax-exempt rate (section 382 limitation).

Section 382(h)(1)(A) provides that if the loss corporation has a net unrealized built-in gain (NUBIG), the section 382 limitation for any taxable year ending within a 5-year recognition period is increased by the recognized built-in gain (RBIG) for the taxable year, subject to the NUBIG limitation. Section 382(h)(2)(A) defines RBIG as any gain recognized during the 5-year recognition period on the disposition of any asset to the extent the loss corporation establishes that (i) It held the asset on the change date and (ii) such gain does not exceed the asset's built-in gain on the change date. Section 382(h)(6)(A) also treats as RBIG any item of income ''properly taken into account during the recognition period'' if the item is ''attributable to periods before the change date.''

In Notice 2003–65 (2003–2 CB 747), the IRS provided interim guidance regarding the identification of built-in gains and losses under section 382(h). The Notice provides, among other things, that a loss corporation may use the 338 approach in determining the amount of its RBIG or recognized built-in loss (RBIL) for purposes of section 382(h). The 338 approach identifies items of RBIG and RBIL generally by comparing the loss corporation's actual items of income, gain, deduction, and loss with those that would have resulted if a section 338 election had been made with respect to a hypothetical purchase of all of the outstanding stock of the loss corporation on the change date.

Prepaid Income

Generally, a taxpayer, including an accrual method taxpayer that receives payments in advance of performance, must include the payments in gross income in the taxable year of receipt without regard to whether the required performance has occurred. In *Schlude* v. *Commissioner*, 372 U.S. 128 (1963), the Supreme Court held that advance payments for dance lessons were includable in gross income when received because the payments were nonrefundable and the services were provided on demand of the student. In *American Automobile Association* v. *United States*, 367 U.S. 687 (1961), the Supreme Court held that membership dues entitling members to emergency road assistance and trip-planning services were includable in gross income when received, even though the taxpayer's method reflected income in accordance with generally accepted accounting principles (which generally operate to defer income recognition until the item is economically earned).

However, courts have allowed the deferral of prepaid income in limited circumstances. In *Artnell Co.* v.

Commissioner, 400 F. 2d 981 (7th Cir. 1968), the court held that amounts received on advance ticket sales relating to major league baseball games to be played on fixed dates in the next year could be deferred to that year. In *Tampa Bay Devil Rays, Ltd.* v. *Commissioner*, T.C. Memo 2002–248, the Tax Court held that deposits received by a new baseball franchise (Devil Rays) in 1995 and 1996 on advance season tickets for major league baseball games to be played by the Devil Rays in its first season in 1998 could be deferred until 1998, even though the deferral period was greater than a year. The Tax Court emphasized that the games were to be played on a fixed and definite schedule in 1998 and that deferral more clearly matched the deposits with the related expenses that were incurred and deducted in 1998.

Congress, the IRS, and Treasury Department have allowed deferral of prepaid income in certain circumstances. For example, section 455 allows taxpayers that have prepaid subscription income for newspapers, magazines, and other periodicals to elect to defer such income to the taxable years during which the liability to furnish or deliver the newspaper, magazine, or periodical exists. Section 1.451–5(b)(1)(ii) allows advance payments for the sale of goods to be deferred to the year the payments are included in gross receipts under the taxpayer's method of accounting for tax purposes (such as when the goods are shipped or delivered), unless the income is recorded earlier for purposes of the taxpayer's financial statements. For goods that must be inventoried the permitted deferral is further limited by § 1.451–5(c)(1) to the second year following the year substantial advance payments, as defined in § 1.451–5(c)(3), are received.

Revenue Procedure 71–21 (1971–2 CB 549), which was modified and superseded by Rev. Proc. 2004–34 (2004–1 CB 991), allowed accrual method taxpayers that received a payment in one taxable year for services to be performed before the end of the next succeeding taxable year to defer income inclusion until the services were performed (but no later than the end of the succeeding taxable year). The stated purpose of the Revenue Procedure was to reconcile the tax accounting treatment of such payments with the financial accounting conventions consistently used by accrual method taxpayers in the treatment of such payments. Rev. Proc. 2004–34 allows a qualifying taxpayer to defer advance payments for services (and for certain non-services and combinations of services and non-services) to the taxable year succeeding the taxable year of receipt to the extent the taxpayer establishes that the advance payments are not recognized in revenues in the taxpayer's applicable financial statement in the taxable year of receipt; or, if the taxpayer does not have an applicable financial statement, the payment is not earned in the taxable year of receipt.

The common purpose of the prepaid income deferral provisions described above is to better match the taxpayer's income with the expenses incurred to earn that income and, as a result, to more clearly reflect the taxpayer's income both in the year of receipt and in the year of performance.

Certain taxpayers are taking the position that prepaid income received in the period before the change date (pre-change period) but included in gross income in the recognition period is RBIG. As further explained below, the IRS and Treasury Department believe that prepaid income is attributable to the period on or after the change date (post-change period) rather than the pre-change period. Thus, treating prepaid income as RBIG is inconsistent with the purposes of section 382(h).

Explanation of Provisions

This temporary regulation provides that prepaid income is not recognized built-in gain. The term prepaid income means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which the temporary regulation applies include, but are not limited to, income received prior to the change date that is deferred under section 455, § 1.451–5, or Rev. Proc. 2004–34 (or any successor revenue procedure).

The IRS and Treasury Department believe that the section 382 legislative history, through the examples set forth therein, supports the position that prepaid income should not be treated as RBIG for section 382 purposes. The House and Senate Committee Reports that accompanied the enactment of section 382(h)(6)(A) both state that items of income attributable to the pre-change period include accounts receivable of a cash basis taxpayer that arose before the change date and are collected after that date, the gain on completion of a long-term contract performed by a taxpayer using the completed contract method of accounting that is attributable to the pre-change period, and the recognition of income attributable to the pre-change period pursuant to section 481 adjustments, as when the loss corporation is required to change to the accrual method. See H. Rep. No. 100–795, 46 (1988); S. Rep. No. 100–445, 48 (1988).

The IRS and Treasury Department believe that prepaid income is distinguishable from the income items described in the committee report examples. In each of the committee report examples, the item of income is attributable to the pre-change period because that is the period in which performance occurred and expenses were incurred to earn the income. By contrast, prepaid income is attributable to the post-change period because that is the period in which performance occurred and expenses were incurred to earn the income. Therefore, because prepaid income is attributable to the post-change period rather than the pre-change period, the IRS and Treasury Department have determined that such prepaid income should not be treated as RBIG under section 382(h).

The 338 approach described in Notice 2003–65 hereinafter will be applied consistently with this temporary regulation.

Comments

The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. Please see the ''Comments and Requests for a Public Hearing'' section of the notice of proposed rulemaking for the procedures to follow in submitting comments on the proposed regulations on this subject.

In preparing comments on the proposed regulations, please consider the following. In Notice 2003–65, comments were requested regarding the different approaches, including the 338 approach, set forth for determining RBIG and RBIL under section 382(h). The IRS and Treasury Department believe the 338 approach, in most cases, will properly identify whether or not an item of income or deduction is treated as RBIG or RBIL. However, the IRS and Treasury Department are concerned that taking items of income and deduction into account separately may cause the 338 approach, in some cases, to not properly identify whether or not an item of income or deduction is treated as RBIG or RBIL. The purpose of section 382(h)(6) is to treat items of income or deduction in similar fashion to gain and loss under section 382(h)(2). However, under general tax principles, there is a fundamental difference between the treatment of items of income or deduction and items of gain or loss. On the one hand, under section 382(h)(2), which incorporates the principles of section 1001, gain or loss on the disposition of an asset is taken into account net of the taxpayer's basis, or investment, in the assets. In contrast, under section 382(h)(6), an item of income is generally a gross amount that is not netted and therefore not necessarily matched with the item of deduction incurred to earn the item of income.

Therefore, the IRS and Treasury Department request comments on the proposed regulations about identifying cases where taking into account items of income and deduction separately may cause the 338 approach to not properly identify whether or not an item of income or deduction is treated as RBIG or RBIL, and how the 338 approach might be adapted so that in such cases it properly identifies whether or not an item of income or deduction is treated as RBIG or RBIL.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12666. Therefore, a regulatory assessment is not required. These temporary regulations address situations in which taxpayers inappropriately attempt to treat deferred prepaid income as net unrealized built-in gain for purposes of increasing the amount of post-ownership change income that may be offset by pre-ownership change losses. For this reason, it has been determined pursuant to 5 U.S.C. 553(b)(B) that prior notice and public procedure are impracticable and contrary to the public interest. For the same reason, it has been determined pursuant to 5 U.S.C. 553(d)(3) that good cause exists to make these temporary regulations effective upon the date of publication. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of the proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings, procedures, and notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *
Section 1.382–7T also issued under 26 U.S.C. 382(m).* * *

■ **Par. 2.** Section 1.382–7T is added to read as follows:

§ 1.382–7T Built-in gains and losses (temporary).

(a) *Treatment of prepaid income.* For purposes of section 382(h), prepaid income is not recognized built-in gain. The term *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455, § 1.451–5, or Rev. Proc. 2004–34 (2004–1 CB 991) (or any successor revenue procedure) (see § 601.601(d)(2) of this chapter).

(b) *Effective/applicability date.* (1) This section applies to loss corporations that have undergone an ownership change on or after June 14, 2007.

(2) The applicability of this section expires on or before June 14, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury.

[FR Doc. E7–11438 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9329]

RIN 1545–BF26

Guidance Necessary To Facilitate Business Electronic Filing and Burden Reduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that affect taxpayers filing Federal income tax returns. They simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. This document also makes conforming changes to certain current regulations.

DATES: *Effective Date:* These regulations are effective on June 14, 2007.

Applicability Date: For dates of applicability, see §§ 1.302–2(d), 1.302–4(h), 1.331–1(f), 1.332–6(e), 1.338–10(c), 1.351–3(f), 1.355–5(e), 1.368–3(e), 1.381(b)–1(e), 1.382–8(j)(4), 1.382–11(b), 1.1081–11(f), 1.1221–2(j), 1.1502–13(m), 1.1502–31(j), 1.1502–32(j), 1.1502–33(k), 1.1502–95(g), 1.1563–3(e) and 1.6012–2(k).

FOR FURTHER INFORMATION CONTACT: For all sections except § 1.6012–2, Grid Glyer, (202) 622–7930; for § 1.6012–2, William T. Sullivan (202) 622–7052 (not toll-free numbers).

SUPPLEMENTARY INFORMATON:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2019.

The collection of information in these final regulations is in §§ 1.302–2, 1.302–4, 1.331–1, 1.332–6, 1.338–10, 1.351–3, 1.355–5, 1.368–3, 1.381(b)–1, 1.382–8, 1.382–11, 1.1081–11, 1.1221–2, 1.1502–13, 1.1502–31, 1.1502–32, 1.1502–33, 1.1502–95, 1.1563–3 and 1.6012–2. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of the fair market value of any property (including stock) received and the basis of any property (including stock) surrendered in the transaction described in such section.

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 control number by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents might 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.

Background

On May 30, 2006, the IRS and Treasury Department published temporary regulations (TD 9264) under 26 CFR part 1 and 26 CFR part 602. See 71 FR 30591, 2006–26 IRB 1150. The IRS and Treasury Department issued a notice of proposed rulemaking (REG–134317–05) cross-referencing those temporary regulations on the same day. See 71 FR 30640, 2006–26 IRB 1184.

In general, the regulations simplify, clarify, or eliminate reporting burdens for corporations and shareholders for certain transactions, including distributions, exchanges and reorganizations. They also eliminate impediments to the electronic filing of statements that taxpayers, primarily large corporations that are members of consolidated or controlled groups, are required to include on their Federal income tax returns.

These regulations were part of a series of regulations published by the IRS and Treasury Department that are designed to eliminate impediments to the electronic filing of forms and statements that taxpayers are required to include on their Federal income tax returns. See, for example, TD 9300, 71 FR 71040, 2007–2 IRB 246, and TD 9243, 71 FR 4276, 2006–8 IRB 475.

Explanation of Provisions

Except as provided in the following paragraph, this Treasury decision adopts the proposed regulations with no substantive changes. In addition, this Treasury decision removes the corresponding temporary regulations.

This Treasury decision does not adopt the following proposed regulations: § 1.1502–35(c)(4)(i), § 1.1502–76(b)(2)(ii)(D) and § 1.1563–1(c)(2)(i) through (iii). These proposed regulations will be addressed as part of other guidance projects.

The IRS and Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. However, three questions were raised informally and are addressed in this preamble.

Section 1.302–2

The first question involves a reporting requirement under § 1.302–2 (redemptions not taxable as dividends). Specifically, the question involved proposed § 1.302–2(b)(2), which requires all ''significant holders'' receiving property from a corporation in exchange for the corporation's stock (''redemption exchanges'') to include a brief information statement on their return. The statement sets forth certain information necessary to determine the proper treatment of the redemption exchange. Under proposed § 1.302–2(b)(3)(i), a significant holder is any stockholder owning 5 percent or more of the stock of a publicly traded company and any stockholder owning 1 percent or more of the stock of a company that is not publicly traded.

The specific question raised was whether the statement is necessary in all redemption exchanges, whether the exchange is treated as a distribution that is essentially equivalent to a dividend or not. Under the proposed regulations, all redemption exchanges are subject to this reporting requirement. The IRS and Treasury Department determined that the simplified information to be provided in the statement is necessary for the identification and evaluation of redemptions that are essentially equivalent to dividends. Furthermore, the required information is information that taxpayers should already have or be prepared to produce. Finally, as noted in this preamble, the regulations limit any remaining burden by imposing the reporting requirement only on significant holders. For all these reasons, the IRS and Treasury Department have concluded that the requirement does not impose an unnecessary or inappropriate burden on taxpayers. Accordingly, the final regulations adopt the rule proposed in § 1.302–2(b)(2) and do not limit the application of the reporting requirement.

Section 1.302–4

The second question involves a reporting requirement under § 1.302–4 (termination of shareholder's interest). Specifically, the question involved the statement in proposed § 1.302–4(a) regarding the waiver of family attribution. Under this section and section 302(c)(2), a redeeming shareholder can avoid being treated as receiving a dividend equivalent distribution by waiving the application of the family attribution rules of section 318(a)(1). Prior to the promulgation of § 1.302–4T(a), § 1.302–4(a)(1) provided that taxpayers were required to file family attribution waiver agreements and § 1.302–4(a)(2) prescribed conditions under which a taxpayer that had failed to timely file the agreement could obtain an extension of time to file from the appropriate district director. Section 1.302–4T(a) removed the requirement that an agreement be filed as well as the instructions regarding late filing. Instead, that regulation provided that a statement must be filed and set forth the information that must be included. Section 1.302–4T(a) did not include instructions for late filers.

The specific question raised was whether the change affected taxpayers' ability to remedy late filing. The IRS and Treasury Department did not intend any change to taxpayers' ability to remedy late filing. However, the final regulations do not incorporate instructions for late filing because the statement required is a regulatory election and the late filing of all regulatory elections is addressed by § 301.9100–1. Accordingly, such instructions are not necessary and could inadvertently imply that the general rules would not otherwise apply.

Section 1.6012–2

Finally, a question was also raised concerning the reporting requirements applicable to foreign insurance corporations electing under section 953(d) to be treated as domestic insurance corporations. Specifically, the question raised was whether such corporations have a reporting requirement.

Section 1.6012–2(c)(1)(i) requires that a domestic life insurance company file with its return a copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return, and a copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement. Section 1.6012–2(c)(2) similarly requires that a domestic nonlife insurance company file with its return a copy of its annual statement, including the underwriting and investment exhibit (or any successor thereto), for the year covered by such return. Section 953(d) provides that a foreign insurance company that satisfies the requirements of section 953(d), including the making of an election under section 953(d)(1)(D), shall be treated as a domestic corporation for purposes of the Internal Revenue Code. Thus, a foreign insurance company that elects under section 953(d) to be treated as a domestic corporation generally is required under § 1.6012–2(c)(1) or (2), as appropriate, to file with its return a copy of its annual statement. Under § 1.6012–2(c)(5), the term ''annual statement'' includes a pro forma annual statement if the insurance company is not required to file the NAIC annual statement.

Because the reporting requirements of electing corporations are addressed in the current regulations, the IRS and Treasury Department are not modifying the regulations to address this point further.

Special Analysis

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to §§ 1.302–2, 1.302–4, 1.331–1, 1.332–6, 1.351–3, 1.355–5, 1.368–3, 1.381(b)–1, 1.1081–11, 1.1563–3, and 1.6012–2. With respect to the collections of information in such sections, and with respect to §§ 1.338–10, 1.382–8, 1.382–11, 1.1221–2, 1.1502–13, 1.1502–31, 1.1502–32, 1.1502–33 and 1.1502–95, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect large corporations (which are members of either controlled or consolidated groups) and in the case of all corporations will substantially reduce or eliminate the existing reporting burden. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glyer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Income taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 is amended by removing the entries for §§ 1.302–2T, 1.302–4T, 1.331–1T, 1.332–6T, 1.338–10T, 1.351–3T, 1.355–5T, 1.368–3T, 1.381(b)–1T, 1.382–8T, 1.382–11T, 1.1081–11T, 1.1221–2T, 1.1502–13T, 1.1502–31T, 1.1502–33T, 1.1502–95T, 1.1563–3T and 1.6012–2T to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2**. Section 1.302–2 is amended by:

■ 1. Adding headings to paragraphs (a), (b), (b)(1) and (c).

■ 2. Revising paragraphs (b)(2) and (d).

■ 3. Adding paragraphs (b)(3) and (b)(4).

The additions and revisions read as follows:

§ 1.302–2 Redemptions not taxable as dividends.

(a) *In general.* * * *

(b) *Redemption not essentially equivalent to a dividend*—(1) *In general.* * * *

(2) *Statement.* Unless § 1.331–1(d) applies, every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the taxable year of such exchange a statement entitled, ''STATEMENT PURSUANT TO § 1.302–2(b)(2) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION].'' If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (b)(2) of this section.

(4) *Cross reference.* See section 6043 of the Internal Revenue Code for requirements relating to a return by a liquidating corporation.

(c) *Basis adjustments.* * * *

(d) *Effective/applicability date.* Paragraphs (b)(2), (b)(3) and (b)(4) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraphs (b)(2), (b)(3) and (b)(4) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.302–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.302–2T [Removed]

■ **Par. 3**. Section 1.302–2T is removed.

■ **Par. 4**. Section 1.302–4 is amended by:

■ 1. Revising paragraphs (a) and (h).

■ 2. Adding headings to paragraphs (b), (c), (d), (e), (f), and (g) introductory text.

The additions and revisions read as follows:

§ 1.302–4 Termination of shareholder's interest.

(a) *Statement.* The agreement specified in section 302(c)(2)(A)(iii) shall be in the form of a statement entitled, ''STATEMENT PURSUANT TO SECTION 302(c)(2)(A)(iii) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER OR RELATED PERSON, AS THE CASE MAY BE], A DISTRIBUTEE (OR RELATED PERSON) OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTING CORPORATION].'' The distributee must include such statement on or with the distributee's first return for the taxable year in which the distribution described in section 302(b)(3) occurs. If the distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The distributee must represent in the statement—

(1) THE DISTRIBUTEE (OR RELATED PERSON) HAS NOT ACQUIRED, OTHER THAN BY BEQUEST OR INHERITANCE, ANY INTEREST IN THE CORPORATION (AS DESCRIBED IN SECTION 302(c)(2)(A)(i)) SINCE THE DISTRIBUTION; and

(2) THE DISTRIBUTEE (OR RELATED PERSON) WILL NOTIFY THE INTERNAL REVENUE SERVICE OF ANY ACQUISITION, OTHER THAN BY BEQUEST OR INHERITANCE, OF SUCH AN INTEREST IN THE CORPORATION WITHIN 30 DAYS AFTER THE ACQUISITION, IF THE ACQUISITION OCCURS WITHIN 10 YEARS FROM THE DATE OF THE DISTRIBUTION.

(b) *Substantiation information.* * * *

(c) *Stock of parent, subsidiary or successor corporation redeemed.* * * *

(d) *Redeemed shareholder as creditor.* * * *

(e) *Acquisition of assets pursuant to creditor's rights.* * * *

(f) *Constructive ownership rules applicable.* * * *

(g) *Avoidance of Federal income tax.* * * *

(h) *Effective/applicability date.* Paragraph (a) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (a) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.302–4 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.302–4T [Removed]

■ **Par. 5**. Section 1.302–4T is removed.

■ **Par. 6**. Section 1.331–1 is amended by:

■ 1. Adding headings to paragraphs (a), (b), (c) and (e).

■ 2. Revising paragraphs (d) and (f).

The additions and revisions read as follows:

§ 1.331–1 Corporate liquidations.

(a) *In general.* * * *

(b) *Gain or loss.* * * *

(c) *Recharacterization.** * *

(d) *Reporting requirement*—(1) *General rule.* Every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the year of such exchange the statement described in paragraph (d)(2) of this section unless—

(i) The property is part of a distribution made pursuant to a corporate resolution reciting that the distribution is made in complete liquidation of the corporation; and

(ii) The issuing corporation is completely liquidated and dissolved within one year after the distribution.

(2) *Statement.* If required by paragraph (d)(1) of this section, a significant holder must include on or with such holder's return a statement entitled, ''STATEMENT PURSUANT TO § 1.331–1(d) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION].'' If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (d)(1) of this section.

(4) *Cross reference.* See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(e) *Example.* * * *

(f) *Effective/applicability date.* Paragraph (d) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (d) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.331–1 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.331–1T [Removed]

■ **Par. 7**. Section 1.331–1T is removed.

■ **Par. 8**. Section 1.332–6 is added to read as follows:

§ 1.332–6 Records to be kept and information to be filed with return.

(a) *Statement filed by recipient corporation.* If any recipient corporation received a liquidating distribution from the liquidating corporation pursuant to a plan (whether or not that recipient corporation has received or will receive other such distributions from the liquidating corporation in other tax years as part of the same plan) during the current tax year, such recipient corporation must include a statement entitled, ''STATEMENT PURSUANT TO SECTION 332 BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION RECEIVING A LIQUIDATING DISTRIBUTION,'' on or with its return for such year. If any recipient corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the liquidating corporation;

(2) The date(s) of all distribution(s) (whether or not pursuant to the plan) by the liquidating corporation during the current tax year;

(3) The aggregate fair market value and basis, determined immediately before the liquidation, of all of the assets of the liquidating corporation that have been or will be transferred to any recipient corporation;

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the liquidation;

(5) The following representation: THE PLAN OF COMPLETE LIQUIDATION WAS ADOPTED ON [INSERT DATE (mm/dd/yyyy)]; and

(6) A representation by such recipient corporation either that—

(i) THE LIQUIDATION WAS COMPLETED ON [INSERT DATE (mm/dd/yyyy)]; or

(ii) THE LIQUIDATION IS NOT COMPLETE AND THE TAXPAYER HAS TIMELY FILED [INSERT EITHER FORM 952, ''Consent To Extend the Time to Assess Tax Under Section 332(b),'' OR NUMBER AND NAME OF THE SUCCESSOR FORM].

(b) *Filings by the liquidating corporation.* The liquidating corporation must timely file Form 966, ''Corporate Dissolution or Liquidation,'' (or its successor form) and its final Federal corporate income tax return. See also section 6043 of the Code.

(c) *Definitions.* For purposes of this section:

(1) *Plan* means the plan of complete liquidation within the meaning of section 332.

(2) *Recipient corporation* means the corporation described in section 332(b)(1).

(3) *Liquidating corporation* means the corporation that makes a distribution of property to a recipient corporation pursuant to the plan.

(4) *Liquidating distribution* means a distribution of property made by the liquidating corporation to a recipient corporation pursuant to the plan.

(d) *Substantiation information.* Under § 1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with a liquidation described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all distributed property, and relevant facts regarding any liabilities assumed or extinguished as part of such liquidation.

(e) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.332–6 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.332–6T [Removed]

■ **Par. 9**. Section 1.332–6T is removed.

■ **Par. 10**. Section 1.338–0 is amended by revising the entries for §§ 1.338–10(a)(4)(iii) and 1.338–10(c) and removing the entry for § 1.338–10T to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–10 Filing of returns.

(a) * * *

(4) * * *

(iii) Procedure for filing a combined return.

* * * * *

(c) Effective/applicability date.

* * * * *

■ **Par. 11**. Section 1.338–10 is amended by revising paragraphs (a)(4)(iii) and (c) to read as follows:

§ 1.338–10 Filing of returns.

(a) * * *

(4) * * *

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include a statement entitled, ''ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15).'' The statement must include—

(A) The name, address, and employer identification number of each target required to be included in the combined return; and

(B) The following declaration: EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN.

* * * * *

(c) *Effective/applicability date.* Paragraph (a)(4)(iii) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (a)(4)(iii) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.338–10 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.338–10T [Removed]

■ **Par. 12**. Section 1.338–10T is removed.

■ **Par. 13**. Section 1.351–3 is added to read as follows:

§ 1.351–3 Records to be kept and information to be filed.

(a) *Significant transferor.* Every significant transferor must include a statement entitled, ''STATEMENT PURSUANT TO § 1.351–3(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT TRANSFEROR,'' on or with such transferor's income tax return for the taxable year of the section 351 exchange. If a significant transferor is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the transferee corporation;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the property transferred by such transferor in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(b) *Transferee corporation.* Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, ''STATEMENT PURSUANT TO § 1.351–3(b) BY [INSERT NAME AND

EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEREE CORPORATION,'' on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(c) *Exception for certain transferee corporations.* The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

(d) *Definitions.* For purposes of this section:

(1) *Significant transferor* means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—

(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded, or

(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(e) *Substantiation information.* Under § 1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.351–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.351–3T [Removed]

■ **Par. 14**. Section 1.351–3T is removed.

■ **Par. 15**. Section 1.355–0 is amended by removing the entry for § 1.355–5T and adding an entry for § 1.355–5.

The revision and addition read as follows:

§ 1.355–0 Outline of sections.

* * * * *

§ 1.355–5 Records to be kept and information to be filed.

(a) Distributing corporation.
(1) In general.
(2) Special rule when an asset transfer precedes a stock distribution.
(b) Significant distributee.
(c) Definitions.
(1) Significant distributee.
(2) Publicly traded stock.
(d) Substantiation information.
(e) Effective/applicability date.

* * * * *

■ **Par. 16**. Section 1.355–5 is added to read as follows:

§ 1.355–5 Records to be kept and information to be filed.

(a) *Distributing corporation*—(1) *In general.* Every corporation that makes a distribution (the distributing corporation) of stock or securities of a controlled corporation, as described in section 355 (or so much of section 356 as relates to section 355), must include a statement entitled, ''STATEMENT PURSUANT TO § 1.355–5(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING CORPORATION,'' on or with its return for the year of the distribution. If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The name and employer identification number (if any) of the controlled corporation;

(ii) The name and taxpayer identification number (if any) of every significant distributee;

(iii) The date of the distribution of the stock or securities of the controlled corporation;

(iv) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) distributed by the distributing corporation in the transaction; and

(v) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the transaction.

(2) *Special rule when an asset transfer precedes a stock distribution.* If the distributing corporation transferred property to the controlled corporation in a transaction described in section 351 or 368, as part of a plan to then distribute the stock or securities of the controlled corporation in a transaction described in section 355 (or so much of section 356 as relates to section 355), then, unless paragraph (a)(1)(v) of this section applies, the distributing corporation must also include on or with its return for the year of the distribution the statement required by § 1.351–3(a) or 1.368–3(a). If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include the statement required by § 1.351–3(a) or 1.368–3(a) on or with its return.

(b) *Significant distributee.* Every significant distributee must include a statement entitled, ''STATEMENT PURSUANT TO § 1.355–5(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT DISTRIBUTEE,'' on or with such distributee's return for the year in which such distribution is received. If a significant distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of the distributing and controlled corporations;

(2) The date of the distribution of the stock or securities of the controlled corporation; and

(3) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant distributee in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant distributee in the distribution or exchange.

(c) *Definitions.* For purposes of this section:

(1) *Significant distributee* means—

(i) A holder of stock of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the stock of the distributing corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock or securities of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder owned securities in such distributing corporation with a basis of $1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) *Substantiation information.* Under § 1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(e) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.355–5 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.355–5T [Removed]

■ **Par. 17.** Section 1.355–5T is removed.

■ **Par. 18.** Section 1.368–3 is added to read as follows:

§ 1.368–3 Records to be kept and information to be filed with returns.

(a) *Parties to the reorganization.* The plan of reorganization must be adopted by each of the corporations that are parties thereto. Each such corporation must include a statement entitled, ''STATEMENT PURSUANT TO § 1.368–3(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION A PARTY TO A REORGANIZATION,'' on or with its return for the taxable year of the exchange. If any such corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. However, it is not necessary for any taxpayer to include more than one such statement on or with the same return for the same reorganization. The statement must include—

(1) The names and employer identification numbers (if any) of all such parties;

(2) The date of the reorganization;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the assets, stock or securities of the target corporation transferred in the transaction; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with this reorganization.

(b) *Significant holders.* Every significant holder, other than a corporation a party to the reorganization, must include a statement entitled, ''STATEMENT PURSUANT TO § 1.368–3(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,'' on or with such holder's return for the taxable year of the exchange. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of all of the parties to the reorganization;

(2) The date of the reorganization; and

(3) The fair market value, determined immediately before the exchange, of all the stock or securities of the target corporation held by the significant holder that is transferred in the transaction and such holder's basis, determined immediately before the exchange, in the stock or securities of such target corporation.

(c) *Definitions.* For purposes of this section:

(1) *Significant holder* means—

(i) A holder of stock of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder owned securities in such target corporation with a basis of $1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) *Substantiation information.* Under § 1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the reorganization described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such reorganization.

(e) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.368–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.368–3T [Removed]

■ **Par. 19**. Section 1.368–3T is removed.

■ **Par. 20**. Section 1.381(b)–1 is amended by revising paragraphs (b)(3) and (e) to read as follows:

§ 1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(3) *Election*—(i) *Content of statements.* The statements referred to in paragraph (b)(2) of this section must be entitled, ''ELECTION OF DATE OF DISTRIBUTION OR TRANSFER PURSUANT TO § 1.381(b)–1(b)(2),'' and must include: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTOR OR TRANSFEROR CORPORATION] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ACQUIRING CORPORATION] ELECT TO DETERMINE THE DATE OF DISTRIBUTION OR TRANSFER UNDER § 1.381(b)–1(b)(2). SUCH DATE IS [INSERT DATE (mm/dd/yyyy)].

(ii) *Filing of statements.* One statement must be included on or with the timely filed Federal income tax return of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer. An identical statement must be included on or with the timely filed Federal income tax return of the acquiring corporation for its first taxable year ending after that date. If the distributor or transferor corporation, or the acquiring corporation, is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return.

* * * * *

(e) *Effective/applicability date.* Paragraph (b)(3) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (b)(3) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.381(b)–1 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.381(b)–1T [Removed]

■ **Par. 21**. Section 1.381(b)–1T is removed.

■ **Par. 22**. Section 1.382–1 is amended by:

■ 1. Revising the entry for § 1.382–8(c)(2).
■ 2. Revising the entry for § 1.382–8(e)(4).
■ 3. Revising the entry for § 1.382–8(h).
■ 4. Revising the entry for § 1.382–8(j)(4).
■ 5. Removing the entry for § 1.382–8T.
■ 6. Adding the entry for § 1.382–11.
■ 7. Removing the entry for § 1.382–11T.

The additions and revisions read as follows:

§ 1.382–1 Table of contents.

* * * * *

■ **Par. 23**. Section 1.382–8 is amended by revising paragraphs (c)(2), (e)(4), (h) and (j)(4) to read as follows:

§ 1.382–8 Controlled groups.

* * * * *

(c) * * *

(2) *Restoration of value.* After the value of the stock of each component member is reduced pursuant to paragraph (c)(1) of this section, the value of the stock of each component member is increased by the amount of value, if any, restored to the component member by another component member (the electing member) pursuant to this paragraph (c)(2). The electing member may elect (or may be deemed to elect under paragraph (h)(2)(i) of this section in the case of a foreign component member) to restore value to another component member in an amount that does not exceed the lesser of—

(i) The sum of—

(A) The value, determined immediately before the ownership change, of the electing member's stock (after adjustment under paragraph (c)(1) of this section and before any restoration of value under this paragraph (c)(2)); plus

(B) Any amount of value restored to the electing member by another component member under this paragraph (c)(2); or

(ii) The value, determined immediately before any ownership change, of the electing member's stock (without regard to any adjustment under this section) that is directly owned by the other component member immediately after the ownership change.

* * * * *

(e) * * *

(4) *Foreign component member*—(i) *In general.* Except as provided in paragraph (e)(4)(ii) of this section, foreign component member means a component member that is a foreign corporation.

(ii) *Exception.* A foreign component member shall not include a foreign corporation that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value pursuant to section 382(e)(3).

* * * * *

(h) *Time and manner of filing election to restore*—(1) *Statements required*—(i) *Filing by loss corporation.* The election to restore value described in paragraph (c)(2) of this section must be in the form set forth in this paragraph (h)(1)(i). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, ''STATEMENT PURSUANT TO § 1.382–8(h)(1) TO ELECT TO RESTORE ALL OR PART OF THE VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE ELECTING MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH VALUE IS RESTORED].'' The statement must include the amount of the value being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(1)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of this agreement as part of its records. See § 1.6001–1(e).

(ii) *Filing by electing member.* An electing member must include a statement identical to the one described in paragraph (h)(1)(i) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (c)(2) of this section is made. If the electing member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing member (or the United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing member and the corporation to which value is restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing member's stock (without regard to any adjustment under paragraph (c) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of this section with respect to stock of the electing member that is owned directly or indirectly by the corporation to which value is restored;

(D) State the amount of value that the electing member elects to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of this section.

(2) *Special rule for foreign component members*—(i) *Deemed election to restore full value.* Unless the election described in paragraph (h)(2)(ii) of this section is made for a foreign component member, each foreign component member of the controlled group is deemed to have elected to restore to each other component member the maximum value allowable under paragraph (c)(2) of this section, taking into account the limitations of this section.

(ii) *Election not to restore full value.* (A) A loss corporation may elect to reduce the amount of value restored from a foreign component member (the electing foreign component member) to another component member under paragraph (h)(2)(i) of this section in the form set forth in this paragraph (h)(2)(ii). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, ''STATEMENT PURSUANT TO § 1.382–8(h)(2)(ii) TO ELECT NOT TO RESTORE FULL VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ELECTING FOREIGN COMPONENT MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH SUCH VALUE IS NOT TO BE RESTORED].'' The statement must include the amount of the value not being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(2)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of the agreement as part of its records. See § 1.6001–1(e).

(B) An electing foreign component member must include a statement identical to the one described in paragraph (h)(2)(ii)(A) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (h)(2)(ii)(A) of this section is made. If the electing foreign component member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing foreign component member (or United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing foreign component member and the corporation to which full value is not restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing foreign component member's stock (without regard to any adjustment under paragraph (c) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of this section with respect to stock of the electing foreign component member that is owned directly or indirectly by the corporation to which value is not restored;

(D) State the amount of value that the electing foreign component member elects not to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of this section.

(3) *Revocation of election.* An election (other than the deemed election described in paragraph (h)(2)(i) of this section) made under this section is revocable only with the consent of the Commissioner.

* * * * *

(j) * * *

(4) *Effective/applicability date.* Paragraphs (c)(2), (e)(4) and (h) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraphs (c)(2), (e)(4) and (h) of this section to any original Federal income

tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.382–8 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.382–8T [Removed]

■ **Par. 24**. Section 1.382–8T is removed.

■ **Par. 25**. Section 1.382–11 is added to read as follows:

§ 1.382–11 Reporting requirements.

(a) *Information statement required.* A loss corporation must include a statement entitled, ''STATEMENT PURSUANT TO § 1.382–11(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION,'' on or with its income tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift or other transaction described in § 1.382–2T(a)(2)(i) occurs. The statement must include the date(s) of any owner shifts, equity structure shifts, or other transactions described in § 1.382–2T(a)(2)(i), the date(s) on which any ownership change(s) occurred, and the amount of any attributes described in § 1.382–2(a)(1)(i) that caused the corporation to be a loss corporation. A loss corporation may also be required to include certain elections on this statement, including—

(1) An election made under § 1.382–2T(h)(4)(vi)(B) to disregard the deemed exercise of an option if the actual exercise of that option occurred within 120 days of the ownership change; and

(2) An election made under § 1.382–6(b)(2) to close the books of the loss corporation for purposes of allocating income and loss to periods before and after the change date for purposes of section 382.

(b) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.382–2T as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.382–11T [Removed]

■ **Par. 26**. Section 1.382–11T is removed.

■ **Par. 27**. Section 1.1081–11 is added to read as follows:

§ 1.1081–11 Records to be kept and information to be filed with returns.

(a) *Distributions and exchanges; significant holders of stock or securities.* Every significant holder must include a statement entitled, ''STATEMENT PURSUANT TO § 1.1081–11(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,'' on or with such holder's income tax return for the taxable year in which the distribution or exchange occurs. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the corporation from which the stock, securities, or other property (including money) was received by such significant holder;

(2) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant holder in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant holder in the distribution or exchange; and

(3) The date of the distribution or exchange.

(b) *Distributions and exchanges; corporations subject to Commission orders.* Each corporation which is a party to a distribution or exchange made pursuant to an order of the Commission must include on or with its income tax return for its taxable year in which the distribution or exchange takes place a statement entitled, ''STATEMENT PURSUANT TO § 1.1081–11(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING OR EXCHANGING CORPORATION.'' If the distributing or exchanging corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The date and control number of the Commission order, pursuant to which the distribution or exchange was made;

(2) The names and taxpayer identification numbers (if any) of the significant holders;

(3) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) transferred in the distribution or exchange; and

(4) The date of the distribution or exchange.

(c) *Sales by members of system groups.* Each system group member must include a statement entitled, ''STATEMENT PURSUANT TO § 1.1081–11(c) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SYSTEM GROUP MEMBER,'' on or with its income tax return for the taxable year in which the sale is made. If any system group member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The dates and control numbers of all relevant Commission orders;

(2) The aggregate fair market value and basis, determined immediately before the sale, of all stock or securities sold; and

(3) The date of the sale.

(d) *Definitions.* (1) For purposes of this section, *Commission* means the Securities and Exchange Commission.

(2) For purposes of this section, *significant holder* means a person that receives stock or securities from a corporation (the distributing corporation) pursuant to an order of the Commission, if, immediately before the transaction, such person—

(i) In the case of stock—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is publicly traded, or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is not publicly traded; or

(ii) In the case of securities, owned securities of the distributing corporation with a basis of $1,000,000 or more.

(3) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(4) For purposes of paragraph (b) of this section, exchange means exchange, expenditure, or investment.

(5) For purposes of paragraph (c) of this section, *system group member* means each corporation which is a member of a system group and which, pursuant to an order of the Commission, sells stock or securities received upon an exchange (pursuant to an order of the Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities.

(e) *Substantiation information.* Under § 1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(f) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.1081–11 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1081–11T [Removed]

■ **Par. 28**. Section 1.1081–11T is removed.

■ **Par. 29**. Section 1.1221–2 is amended by revising paragraphs (e)(2)(iv) and (j) to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(e) * * *

(2) * * *

(iv) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the election described in paragraph (e)(2) of this section must be made in a separate statement that provides, ''[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF § 1.1221–2(e)(2) (THE SEPARATE-ENTITY APPROACH).'' The statement must also indicate the date as of which the election is to be effective. The election must be filed by including the statement on or with the consolidated group's income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated. The election may only be revoked with the consent of the Commissioner.

* * * * *

(j) *Effective/applicability date.* Paragraph (e)(2)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1221–2T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1221–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1221–2T [Removed]

■ **Par. 30**. Section 1.1221–2T is removed.

■ **Par. 31**. Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(E), (f)(6)(i)(C)(*2*) and (m) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(E) *Election.* An election to apply paragraph (f)(5)(ii) of this section is made in a separate statement entitled, ''[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF § 1.1502–13(f)(5)(ii) FOR AN INTERCOMPANY TRANSACTION INVOLVING [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF T].'' A separate election must be made for each such application. The election must be filed by including the statement on or with the consolidated group's income tax return for the year of T's liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application of paragraph (f)(5)(ii) of this section that are consistent with the purposes of such section. The statement must—

(*1*) Identify S's intercompany transaction and T's liquidation (or other transaction); and

(*2*) Specify which provision of paragraph (f)(5)(ii) of this section applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S's intercompany items and the amount deferred or offset as a result of paragraph (f)(5)(ii) of this section).

(6) * * *

(i) * * *

(C) * * *

(*2*) *Election.* The election described in paragraph (f)(6)(i)(C)(*1*) of this section must be made in a separate statement entitled, ''ELECTION TO REDUCE BASIS OF P STOCK UNDER § 1.1502–13(f)(6) HELD BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF MEMBER WHOSE BASIS IN P STOCK IS REDUCED].'' The election must be filed by including the statement on or with the consolidated group's income tax return for the year in which the nonmember becomes a member. The statement must identify the member's basis in the P stock (taking into account the effect of this election) and the number of shares of P stock held by the member.

* * * * *

(m) *Effective/applicability date.* Paragraphs (f)(5)(ii)(E) and (f)(6)(i)(C)(*2*) of this section apply to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–13T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–13 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–13T [Removed]

■ **Par. 32**. Section 1.1502–13T is removed.

■ **Par. 33**. Section 1.1502–31 is amended by revising paragraphs (e)(2) and (j) to read as follows:

§ 1.1502–31 Stock basis after a group structure change.

* * * * *

(e) * * *

(2) *Election.* The election described in paragraph (e)(1) of this section must be made in a separate statement entitled, ''ELECTION TO TREAT LOSS CARRYOVER AS EXPIRING UNDER § 1.1502–31(e).'' The election must be filed by including the statement on or with the consolidated group's income tax return for the year that includes the group structure change. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed

not to expire, with any balance of any loss carryovers being deemed to expire).

* * * * *

(j) *Effective/applicability date.* Paragraph (e)(2) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–31T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–31 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–31T [Removed]

■ **Par. 34**. Section 1.1502–31T is removed.

■ **Par. 35**. Section 1.1502–32 is amended by revising paragraphs (b)(4)(iv) and (j) to read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(iv) *Election.* The election described in paragraph (b)(4) of this section must be made in a separate statement entitled, ''ELECTION TO TREAT LOSS CARRYOVER OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AS EXPIRING UNDER § 1.1502–32(b)(4).'' The election must be filed by including a statement on or with the consolidated group's income tax return for the year S becomes a member. A separate statement must be made for each member whose loss carryover is deemed to expire. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire) and the basis of any stock reduced as a result of the deemed expiration.

* * * * *

(j) *Effective/applicability date.* Paragraph (b)(4)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–32T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–32 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–32T [Amended]

■ **Par. 36**. Section 1.1502–32T is amended by removing and reserving paragraphs (b)(4)(iv) and (j).

■ **Par. 37**. Section 1.1502–33 is amended by revising paragraphs (d)(5)(i)(D) and (k) to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(d) * * *

(5) * * *

(i) * * *

(D) If a method is permitted under paragraph (d)(4) of this section, provide the date and control number of the private letter ruling issued by the Internal Revenue Service approving such method.

* * * * *

(k) *Effective/applicability date.* Paragraph (d)(5)(i)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–33T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–33 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–33T [Removed]

■ **Par. 38**. Section 1.1502–33T is removed.

■ **Par. 39**. Section 1.1502–90 is amended by:

■ 1. Revising the entry for § 1.1502–95(e)(8).

■ 2. Revising the entry for § 1.1502–95(f).

■ 3. Revising the entry for § 1.1502–95(g).

■ 4. Removing the entry for § 1.1502–95T.

The revisions read as follows:

§ 1.1502–90 Table of contents.

* * * * *

* * * * *

■ **Par. 40**. Section 1.1502–95 is amended by revising paragraphs (e)(8), (f) and (g) to read as follows:

§ 1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

* * * * *

(e) * * *

(8) *Reporting requirements*—(i) *Common Parent.* Except as provided in paragraph (e)(8)(iii) of this section, if a net unrealized built-in loss is allocated under paragraph (e) of this section, the common parent must include a statement entitled, ''STATEMENT OF NET UNREALIZED BUILT-IN LOSS ALLOCATION PURSUANT TO § 1.1502–95(e),'' on or with its income tax return for the taxable year in which the former member(s) (or a new loss subgroup that includes that member) ceases to be a member. The statement must include—

(A) The name and employer identification number of the departing member;

(B) The amount of the remaining NUBIL balance for the taxable year in which the member departs;

(C) The amount of the net unrealized built-in loss allocated to the departing member; and

(D) A representation that the common parent has delivered a copy of the statement to the former member (or the common parent of the group of which the former member is a member) on or before the day the group files its income tax return for the consolidated return year that the former member ceases to be a member.

(ii) *Former member.* Except as provided in paragraph (e)(8)(iii) of this section, the former member must include a statement on or with its first income tax return (or the first return in which the former member joins) that is filed after the close of the consolidated return year of the group of which the former member (or a new loss subgroup that includes that member) ceases to be a member. The statement will be identical to the statement filed by the common parent under paragraph (e)(8)(i) of this section except that instead of including the information described in paragraph (e)(8)(i)(A) of this section the former member must provide the name, employer identification number and tax year of the former common parent, and instead of the representation described in paragraph (e)(8)(i)(D) of this section the former member must represent that it has received and retained the copy of the statement delivered by the common parent as part of its records. See § 1.6001–1(e).

(iii) *Exception.* This paragraph (e)(8) does not apply if the required information (other than the amount of the remaining NUBIL balance) is included in a statement of election under paragraph (f) of this section (relating to apportioning a section 382 limitation).

(f) *Filing the election to apportion the section 382 limitation and net unrealized built-in gain*—(1) *Form of the election to apportion*—(i) *Statement.* An election under paragraph (c) of this section must be made in the form set forth in this paragraph (f)(1)(i). The election must be made by the common parent and the party described in paragraph (f)(2) of this section. It must be filed in accordance with paragraph (f)(3) of this section and be entitled, ''THIS IS AN ELECTION UNDER § 1.1502–95 TO APPORTION ALL OR PART OF THE [INSERT THE CONSOLIDATED SECTION 382 LIMITATION, THE SUBGROUP SECTION 382 LIMITATION, THE LOSS GROUP'S NET UNREALIZED BUILT-IN GAIN, OR THE LOSS SUBGROUP'S NET UNREALIZED BUILT-IN GAIN, AS APPROPRIATE] IN THE AMOUNT OF [INSERT THE AMOUNT OF THE LOSS LIMITATION OR NET UNREALIZED BUILT-IN GAIN] TO [INSERT NAME(S) AND EMPLOYER IDENTIFICATION NUMBER(S) OF THE CORPORATION (OR THE CORPORATIONS THAT COMPOSE A NEW LOSS SUBGROUP) TO WHICH ALLOCATION IS MADE].'' The statement must also indicate that an agreement, as described in paragraph (f)(1)(ii) of this section, has been entered into.

(ii) *Agreement.* Both the common parent and the party described in paragraph (f)(2) of this section must sign and date the agreement. The agreement must include, as appropriate—

(A) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation) or the loss group's (or loss subgroup's) net unrealized built-in gain;

(B) The amount of the departing member's (or loss subgroup's) pre-change net operating loss carryovers and the taxable years in which they arose that will be subject to the limitation that is being apportioned to that member (or loss subgroup);

(C) The amount of any net unrealized built-in loss allocated to the departing member (or loss subgroup) under paragraph (e) of this section, which, if recognized, can be a pre-change attribute subject to the limitation that is being apportioned;

(D) If a consolidated section 382 limitation (or subgroup section 382 limitation) is being apportioned, the amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the taxable year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(E) If any net unrealized built-in gain is being apportioned, the amount of the loss group's (or loss subgroup's) net unrealized built-in gain (as determined under paragraph (c)(2)(ii) of this section) that may be apportioned to members that ceased to be members during the consolidated return year;

(F) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(G) The amount of the loss group's (or loss subgroup's) net unrealized built-in gain that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(H) If the former member is allocated any net unrealized built-in loss under paragraph (e) of this section, the amount of any adjustment element apportioned to the former member that is attributable to recognized built-in gains (determined in a manner that will enable both the group and the former member to apply the principles of § 1.1502–93(c)); and

(*1*) The name and employer identification number of the common parent making the apportionment.

(2) *Signing the agreement.* The agreement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns. If the allocation is made to a loss subgroup for which an election under § 1.1502–91(d)(4) is made, and not separately to its members, the agreement under this paragraph (f) must be signed by the common parent and any member of the new loss subgroup by persons authorized to sign their respective income tax returns. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See § 1.6001–1(e).

(3) *Filing of the election*—(i) *Filing by the common parent.* The election must be filed by the common parent of the group that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) or the loss group's net unrealized built-in gain (or loss subgroup's net unrealized built-in gain) by including the statement on or with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member.

(ii) *Filing by the former member.* An identical statement must be included on or with the first return of the former member (or the first return in which the former member, or the members of a new loss subgroup, join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election.* An election statement made under paragraph (c) of this section is revocable only with the consent of the Commissioner.

(g) *Effective/applicability date.* Paragraphs (e)(8) and (f) of this section apply to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–95T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–95 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1502–95T [Removed]

■ **Par. 41**. Section 1.1502–95T is removed.

■ **Par. 42**. Section 1.1563–3 is amended by revising paragraph (d)(2)(iv), adding paragraph (d)(2)(v) and revising (e) to read as follows:

§ 1.1563–3 Rules for determining stock ownership.

* * * * *

(d) * * *

(2) * * *

(iv) *Statement.* If the application of paragraph (d)(2)(ii) or (iii) of this section does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then such corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return a statement entitled, ''STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO § 1.1563–3(d)(2)(iv).'' The statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(v) *Election*—(A) *Election filed.* An election filed under paragraph (d)(2)(iv) of this section is irrevocable and effective until paragraph (d)(2)(ii) or (iii) of this section applies or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of paragraph (d)(2)(iv) of this section, then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

* * * * *

(e) *Effective/applicability date.* Paragraph (d)(2)(iv) and (v) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (d)(2)(iv) and (v) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.1563–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.1563–3T [Removed]

■ **Par. 43**. Section 1.1563–3T is removed.

■ **Par. 44**. Section 1.6012–2 is amended by revising paragraphs (c) and (k) to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(c) *Insurance companies*—(1) *Domestic life insurance companies*—(i) *In general.* A life insurance company subject to tax under section 801 shall make a return on Form 1120–L, ''U.S. Life Insurance Company Income Tax Return.'' Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks.* Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120, ''U.S. Corporation Income Tax Return,'' and partial tax computed on Form 1120–L. The Form 1120–L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120–L.

(2) *Domestic nonlife insurance companies.* Every domestic insurance company other than a life insurance company shall make a return on Form 1120–PC, ''U.S. Property and Casualty Insurance Company Income Tax Return.'' This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a pro forma annual statement), including the underwriting and investment exhibit (or any successor thereto) for the year covered by such return.

(3) *Foreign insurance companies.* The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the pro forma annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically.* If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or pro forma annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See § 1.6001–1(e).

(5) *Definition.* For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a pro forma annual statement if the insurance company is not required to file the NAIC annual statement.

* * * * *

(k) *Effective/applicability date.* Paragraph (c) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.6012–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§ 1.6012–2T [Removed]

■ **Par. 45**. Section 1.6012–2T is removed.

§§ 1.338(h)(10)–1, 1.382–2T, 1.382–8, 1.1502–13, 1.1502–32, 1.502–92, 1.502–94, 1.502–95, 1.563–3, and 1.6043–2 [Amended]

■ **Par. 46**. For each entry in the ''Location'' column of the following table, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place:

Location	Remove	Add
The last sentence of the introductory text to § 1.302–4.	The rules described in paragraph (a) of § 1.302–4T and in paragraphs (b) through (g) of this section apply in determining whether the specific requirements of section 302(c)(2) are met.	The following rules shall be applicable in determining whether the specific requirements of section 302(c)(2) are met:
§ 1.338(h)(10)–1(f)	§ 1.331–1T(d) and § 1.332–6T	§ 1.331–1(d) and § 1.332–6.
§ 1.382–2T(a)(2)(ii)	§ 1.382–11T	§ 1.382–11.
The last sentence of § 1.382–2T(h)(4)(vi)(B)	paragraph (a) of § 1.382–11T	§ 1.382–11(a).
The first sentence of § 1.382–6(b)(2)(i)	§ 1.382–11T(a)	§ 1.382–11(a).
The second sentence of § 1.382–8(a)	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of § 1.382–8T.	paragraph (c) of this section.
The third sentence of § 1.382–8(a)	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of § 1.382–8T.	paragraph (c) of this section.
§ 1.382–8(c)(3)	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
The first sentence of § 1.382–8(c)(4)	paragraphs (c)(1) and (c)(3) of this section and paragraph (c)(2) of § 1.382–8T.	paragraphs (c)(1), (2), and (3) of this section.
§ 1.382–8(c)(5)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of § 1.382–8T.	this paragraph (c).
The fifth sentence of § 1.382–8(f)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of § 1.382–8T.	paragraph (c) of this section.
§ 1.382–8(g), *Example* (1)(b)(2)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of § 1.382–8T.	paragraph (c) of this section.
The second sentence of § 1.382–8(g), *Example* (1)(c).	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of § 1.382–8T.	paragraph (c) of this section.
§ 1.382–8(g), *Example* (2)(c)	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
The first sentence of § 1.382–8(g), *Example* (2)(e).	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
§ 1.382–8(g), *Example* (3)(b)	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
§ 1.382–8(g), *Example* (3)(c)(1)(B)	paragraph (c)(1) of this section and paragraph (c)(2) of § 1.382–8T.	paragraphs (c)(1) and (2) of this section.
The second sentence of § 1.382–8(g), *Example* (4)(c).	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
The second sentence of § 1.382–8(g), *Example* (5)(c).	paragraph (c)(2) of § 1.382–8T	paragraph (c)(2) of this section.
§ 1.1502–13(a)(6)(ii), *Matching rule*, *Example* 13.	Manufacturer incentive payments	[Reserved].
The first sentence of § 1.1502–32(b)(4)(v)(A)	paragraph (b)(4)(iv) of § 1.1502–32T	paragraph (b)(4)(iv) of this section.
The first sentence of § 1.1502–32(b)(4)(v)(B)	paragraph (b)(4)(iv) of § 1.1502–32T	paragraph (b)(4)(iv) of this section.
§ 1.1502–92(e)(1)	§ 1.382–11T(a)	§ 1.382–11(a).
The first sentence of § 1.1502–92(e)(2)	§ 1.382–11T(a)	§ 1.382–11(a).
The first sentence of § 1.1502–94(d)	§ 1.382–11T(a)	§ 1.382–11(a).
The second sentence of § 1.1502–94(d)	§ 1.382–11T(a)	§ 1.382–11(a).
The last sentence of § 1.1502–95(b)(3)	paragraph (f) of § 1.1502–95T	paragraph (f) of this section.
The second sentence of § 1.1563–3(d)(2)(i)	paragraphs (d)(2)(ii) and (iii) of this section, and paragraph (d)(2)(iv) of § 1.1563–3T.	paragraphs (d)(2)(ii), (iii) and (iv) of this section.
The first sentence of § 1.6043–2(a)	§ 1.332–6T(a), § 1.368–3T(a), or § 1.1081–11T.	§ 1.332–6(b), 1.368–3(a), or 1.1081–11.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 46a**. The authority citation for part 300 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 301.6011–5T also issued under 26 U.S.C. 6011.

§ 301.6011–5T [Amended]

■ **Par. 46b**. In the following table remove the language in the ''remove'' column and add the text from the ''add'' column in its place.

Location	Remove	Add
The first sentence of § 301.6011–5T(a)(twice)	paragraphs (a), (b) and (d) through (j) of § 1.6012–2, and paragraph (c) of § 1.6012–2T.	§ 1.6012–2.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 47**. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 48**.

■ 1. In § 602.101(b), the following entries to the table are removed:

1.302–2T	1545–2019
1.302–4T	1545–2019
1.331–1T	1545–2019
1.332–6T	1545–2019
1.338–10T	1545–2019
1.351–3T	1545–2019
1.355–5T	1545–2019
1.368–3T	1545–2019
1.381(b)–1T	1545–2019
1.382–8T	1545–2019
1.382–11T	1545–2019
1.1081–11T	1545–2019
1.1221–2T	1545–2019
1.1502–13T	1545–2019
1.1502–31T	1545–2019
1.1502–32T	1545–2019
1.1502–33T	1545–2019
1.1502–95T	1545–2019
1.1563–3T	1545–2019
1.6012–2T	1545–2019

■ 2. The following entries are added in numerical order to the table:

1.332–6	1545–2019
1.351–3	1545–2019
1.355–5	1545–2019
1.368–3	1545–2019
1.382–11	1545–2019
1.1081–11	1545–2019

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: June 4, 2007.

Eric Solomon,

Assistant Secretary of the Treasury.

[FR Doc. E7–11148 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9901 and 9903

Cost Accounting Standards Board (CAS) Changes to Acquisition Thresholds

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards (CAS) Board, is revising the threshold for the application of CAS to negotiated Government contracts. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act. The Board is taking final action on this topic in order to adjust the CAS applicability threshold in accordance with Section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163). Section 822 amended 41 U.S.C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA).

DATES: This final rule is effective June 14, 2007.

FOR FURTHER INFORMATION CONTACT: Laura Auletta, Manager, Cost Accounting Standards Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202–395–3256).

SUPPLEMENTARY INFORMATION:

A. Background

On December 15, 2005, the CAS Board issued a proposed rule with request for comment (70 FR 73423) for the purpose of implementing Sec. 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108–375, ''Inflation Adjustment of Acquisition-Related Dollar Thresholds.'' Section 807 of Pub. L. 108–375 requires the periodic adjustment of acquisition-related thresholds contained in statutes that were in effect on October 1, 2000, with certain exceptions. The Federal Acquisition Regulation (FAR) Council is authorized to adjust these thresholds based on increases in the Consumer Price Index for all-urban consumers (CPI) and as prescribed in the Public Law.

Based on further review, the Board has determined that its thresholds are not subject to the provisions of Section 807 of the Pub. L 108–375 because these thresholds are not ''acquisition related,'' as defined by Section 807. Therefore, this final rule does not adjust the CAS thresholds to reflect the provisions of Section 807.

However, subsequent to the issuance of the CAS Board's proposed rule, Section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163) amended 41 U.S.C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA). The TINA threshold is currently $650,000 (71 FR 57363). Accordingly, the Board is increasing the CAS applicability threshold to $650,000 to comply with Public Law 109–163.

B. Public Comments

The Board received three sets of public comments in response to the proposed rule.

1. PL 108–375 Does Not Require Threshold Adjustments

Comment: Two commenters opined that Section 807 of Public Law 108–375 does not apply to statutory thresholds in the Board's rules, regulations and standards. These commenters asserted that the law applies only to acquisition-related statutory dollar thresholds contained in the FAR. Thus, the Board is not required to adjust its statutory thresholds in response to Pub. L. 108–375.

Response: After further review of this issue, the Board agrees that Section 807 does not apply to the CAS thresholds. Section 807 of Public Law 108–375 requires the Federal Acquisition Regulatory Council to adjust each ''acquisition-related dollar threshold.'' Section 807 defines an acquisition-related dollar threshold as ''a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as determined by the Federal Acquisition Regulatory Council.'' The scope and applicability of the CAS is within the sole purview of the CAS Board. The Federal Acquisition Regulatory Council does not determine the scope or applicability of the Cost Accounting Standards. Therefore, for purposes of applying Section 807, the thresholds in the CAS do not meet the definition of an ''acquisition threshold.'' Thus, the requirements of Public Law 108–375 do not apply to the CAS thresholds. However, the Board is issuing a final rule to adjust the CAS applicability threshold required by Public Law 109–163.

2. Consistency Between CAS Applicability and TINA Thresholds

Comment: One commenter recommended that the CAS applicability threshold be modified to adopt the Truth in Negotiations Act (TINA) threshold for requiring cost or pricing data (FAR 15.403–4) since it will be very difficult to administer the impact of CAS issues associated with such contracts.

Response: As previously noted, shortly after the publication of the proposed rule, 41 U.S.C. 422(f)(2)(A) was amended to require that the CAS applicability threshold be equal to the TINA threshold. Accordingly, this final rule adjusts the CAS applicability threshold to $650,000, which is the current TINA threshold.

3. Advisability of Adjusting CAS Thresholds

Comment: One commenter asserted that the proposed threshold adjustments represent bad public policy and that previous increases in these thresholds have been ''simply astounding, and far in excess of any inflationary increases, no matter how measured.''

Response: Consistent with the intent of the proposed rule, the final rule includes only those adjustments of the CAS applicability threshold that are statutorily required. As such, the Board does not believe the commenter's assertion regarding the adjustments in the final rule has any merit.

4. Failure To Track CAS Thresholds to Inflation Expands CAS Applicability Beyond Its Original Intent

Comment: One commenter recommended that the Board independently review its thresholds to determine whether ''economic factors have caused more contractors to have become subject to CAS coverage'' and ''consider if there are now contractors covered in 2006 that the Board did not intend to cover in 1992.''

Response: The purpose of the proposed and final rules was to adjust the CAS thresholds to reflect statutory requirements. As such, the Board is confining the adjustment of CAS thresholds in this final rule to those adjustments required by statute. The Board will consider the commenter's recommendation to review the other CAS thresholds when formulating its agenda for future actions.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The Board certifies that this rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from the application of the Cost Accounting Standards.

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

■ For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is amended as set forth below:

PART 9901—RULES AND PROCEDURES

■ 1. The authority citation for part 9901 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

■ 2. Revise section 9901.306 to read as follows:

9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $650,000, other than contracts or subcontracts that have been exempted by the Board's regulations.

PART 9903—CONTRACT COVERAGE

■ 3. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

Subpart 9903.2—CAS Program Requirements

■ 4. Section 9903.201–1 is amended by revising paragraph (b)(2) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(2) Negotiated contracts and subcontracts not in excess of $650,000. For purposes of this paragraph (b)(2) an order issued by one segment to another segment shall be treated as a subcontract.

* * * * *

■ 5. Section 9903.201–2 is amended by revising paragraphs (c)(3) and (c)(5) to read as follows:

9903.201–2 Types of CAS coverage.

(c) * * *

(3) *Applicable standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $650,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

* * * * *

(5) *Contract clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $650,000. For CAS-covered contracts awarded to an FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4(a) or (c), as applicable, shall be incorporated.

* * * * *

■ 6. Section 9903.201–3 is amended by revising the provision heading and by revising paragraph (a) in Part I of the provision to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (June 2007)

* * * * *

I. *Disclosure Statement—Cost Accounting Practices and Certification*

(a) Any contract in excess of $650,000 resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201–1.

* * * * *

■ 7. Section 9903.201–4 is revised to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraph (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards (June 2007)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $650,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

(b) [Reserved]

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The Contracting Officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $650,000 but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the Contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

Disclosure and Consistency of Cost Accounting Practices (June 2007)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable

CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(d) [Reserved]

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institutions, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards—Educational Institutions (June 2007)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of part 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

■ 8. Section 9903.202–1 is amended by revising:

■ A. Paragraph (c);

■ B. Paragraph (f)(2)(i); and

■ C. Paragraphs (f)(3)(i), (ii), and (iii)

The revisions read as follows:

9903.202–1 General requirements.

* * * * *

(c) When a Disclosure Statement is required, a separate Disclosure

Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $650,000, unless * * *

(f) * * *

(2) * * *

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $650,000 and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award.* * *

(3) * * *

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $650,000 and are part of the first 20 college or university locations (i.e., numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $650,000 and are part of a college or university location that is listed as one of the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $650,000 and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

[FR Doc. E7–11328 Filed 6–13–07; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT60

[Docket No. 061020273–7001–03; I.D. 010307A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Emergency Rule Extension

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is extending the revised summer flounder total allowable landings (TAL) implemented on January 19, 2007, until December 31, 2007, the end of the 2007 fishing year. This emergency rule extension specifies allowed harvest limits for both the commercial and recreational summer flounder fisheries. The TAL contained within this emergency rule extension continues the previous harvest limits for summer flounder that became effective on January 19, 2007, which superceded the harvest limits initially implemented on January 1, 2007. This action continues the prohibition on federally permitted commercial vessels landing summer flounder in Delaware in 2007 due to continued quota repayment of previous year's overages.

This emergency rule extension is necessary to maintain the increased 2007 summer flounder harvest levels previously found to be consistent with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Reauthorized Magnuson-Stevens Act) through the end of the 2007 fishing year. Extending this emergency action will ensure continued compliance with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). In addition, this action will continue to ensure that fishing mortality rates (F) or exploitation rates, as specified in the FMP, are not exceeded.

DATES: Effective from July 18, 2007 through December 31, 2007.

ADDRESSES: Copies of the Supplemental Environmental Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. This document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael P. Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: Summer flounder is currently under a rebuilding plan. NMFS published a final rule containing the 2007 summer flounder TAL on December 14, 2006 (71 FR 75134). The 12.983–million-lb (5,889–mt) TAL in that rule became effective on January 1, 2007, which was a 45–percent decrease from the TAL specified for 2006.

Following the publication of the 2007 summer flounder TAL in the **Federal Register**, the Reauthorized Magnuson-Stevens Act was signed into law on January 12, 2007. Contained within the Reauthorized Magnuson-Stevens Act is a specific provision under section 120(a) that authorizes the Secretary of Commerce (Secretary) to extend the rebuilding time frame for summer flounder to no later than January 1, 2013, provided that several specific conditions are met. The Secretary must determine that:

1. Overfishing is not occurring in the summer flounder fishery and that a mechanism is in place to ensure overfishing does not occur in the fishery and stock biomass levels are increasing;
2. The biomass rebuilding target previously applicable to the summer flounder stock will be met or exceeded within the new time for rebuilding;
3. The extension period is based on the status and biology of the stock and the rate of rebuilding;
4. Monitoring will ensure rebuilding continues;
5. The extension meets the requirements of National Standard 1 found at section 301(a)(1) of the Magnuson-Stevens Act; and
6. The best scientific information available shows that the extension will allow continued rebuilding.

On behalf of the Secretary, NMFS previously determined that these six criteria had been met and that there is a reasonable basis to extend the summer flounder rebuilding time frame to no later than January 1, 2013. Based on these determinations, NMFS implemented an emergency rule, effective January 19, 2007 (72 FR 2458), to increase the TAL to 17.112 million lb (7,762 mt). The agency's decision to enact emergency rulemaking was consistent with the policy guidelines for the use of emergency rules published in the **Federal Register** on August 21, 1997 (62 FR 44421).

A detailed discussion of the Secretarial determinations made relative to section 120(a) of the revised Magnuson-Stevens Act appears in the initial emergency rule (72 FR 2458, January 19, 2007) and is not repeated here. The emergency rule TAL is based on the revised rebuilding time frame ending no later than January 1, 2013, which supersedes the previous TAL of 12.983 million lb (5,889 mt) that was based on a rebuilding period end date of January 1, 2010. The 17.112–million-lb (7,762–mt) TAL will continue to be allocated 10.27 million lb (4,658 mt) to the commercial sector and 6.84 million lb (3,104 mt) to the recreational sector under this extension. The commercial summer flounder state quotas remain unchanged by this extension from those described in the initial emergency action published on January 19, 2007 (72 FR 2458), and are not repeated here.

This emergency rule extension does not alter the previous amount of summer flounder set aside for research in the December 14, 2006, final rule. Four research projects that will utilize the previously established summer flounder RSA of 389,490 lb (177 mt) have been approved by NMFS.

Delaware Summer Flounder Closure

Under this extension to the January 19, 2007 (72 FR 2458) emergency rule, the amount of the 2006 summer flounder quota overage (inclusive of overharvest from previous years) continues to be greater than the amount of commercial quota allocated to Delaware for 2007. As a result, there continues to be no quota available for 2007 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, may not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder fisheries permits are prohibited for the duration of this emergency rule extension, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the duration of this emergency rule extension, unless additional quota becomes available through a transfer.

Comments and Responses

NMFS received one comment on the initial emergency action. NMFS received 1,321 form letters prior to the emergency rule comment period that are being considered as comments on the initial emergency rule. Some commenters submitted similar comments on separate occasions.

Comment 1: This commenter spoke in support of the original TAL implemented for January 1, 2007, and the previously mandated 10–year rebuilding schedule.

Response: The 12.983–million-lb (5,889–mt) TAL previously implemented by NMFS for the 2007 fishing year was considered sufficiently risk averse to ensure stock rebuilding occurred by January 1, 2010, as previously required by the Magnuson-Stevens Act prior to its 2006 reauthorization. Following the reauthorization of the Magnuson-Stevens Act, the Secretary was afforded specific authority to extend the rebuilding period to no later than January 1, 2013, provided the criteria previously outlined in this rule were met. The criteria within section 120(a) of the Reauthorized Magnuson-Stevens Act were found by the Secretary to have been satisfied and, accordingly, NMFS recalculated the TAL for 2007 based on an extended rebuilding period. The resulting 17.112–million-lb (7,762–mt) TAL implemented by emergency rule (January 19, 2007, 72 FR 2458) and extended by this action has a 75–percent probability of achieving the new F level (Frebuild=0.203) calculated for stock rebuilding by January 1, 2013. The 17.112–million-lb (7,762–mt) TAL has a 99–percent probability of not exceeding the 2007 F_{max} threshold (0.28). The 17.112–million-lb (7,762–mt) TAL and associated commercial and recreational management measures will effectively ensure that overfishing does not occur in the summer flounder fishery in 2007. The emergency rule TAL extended by this action will somewhat mitigate the socio-economic impacts associated with the lower TAL initially implemented for 2007 while ensuring that the requirements of the Magnuson-Act and the fishery management plan are met. NMFS asserts that this was the desired effect of the specific rebuilding period extension authority granted to the Secretary by the U.S. Congress through the Reauthorized Magnuson-Stevens Act.

Comment 2: One thousand three hundred and twenty-one comments were received as form letters from various recreational fishing groups. They spoke in favor of increasing the summer flounder TAL as soon as possible following the enactment of the Reauthorized Magnuson-Stevens Act. These commenters urged NMFS to establish a TAL with no more than a 50–percent probability of not exceeding the 2007 F target.

Response: The Reauthorized Magnuson-Stevens Act was signed into law on January 12, 2007. NMFS worked as quickly as possible to implement an increased TAL and published an initial emergency rule to increase the TAL from 12.983–million-lb (5,889–mt) to 17.112–million-lb (7,762–mt) on January 19, 2007 (72 FR 2458).

NMFS is continuing to implement measures designed to mitigate the retrospective patterns in fishing mortality, stock size, and recruitment by utilizing a more conservative TAL for 2007, to ensure that the necessary fishing mortality target is actually achieved. The risk-averse approach of setting a TAL with a 75–percent probability of not exceeding the 2007 F target was applied in setting the initial 12.983–million-lb (5,889–mt) TAL effective on January 1, 2007 (71 FR 75134). This approach was also applied to the initial emergency action 17.112–million-lb (7,762–mt) TAL implemented on January 19, 2007 (72 FR 2458).

Achieving the fishing mortality target level in 2007 is necessary to provide for rebuilding of the summer flounder stock within the extended rebuilding period, ending no later than January 1, 2013, as implemented by the Reauthorized Magnuson-Stevens Act.

Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act.

This action has been determined to be not significant for the purposes of Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The Assistant Administrator finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on January 19, 2007 (72 FR 2459), NMFS requested, and subsequently received, comments on the increased summer flounder TAL. Therefore, the agency has the authority to extend the emergency action for up to 186 days beyond the July 19, 2007, expiration of the initial emergency action. NMFS, through this action, extends the emergency action to the end of the 2007 fishing year (165 days), which ends on December 31, 2007.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency rule that increased the 2007 summer flounder TAL. The extension measures must be in place by July 19, 2007, or the lower TAL based on the 2010 rebuilding target will go into effect. The initial emergency rule implemented a higher TAL in response to authority granted by the reauthorization and amendment of the Magnuson-Stevens Act. Section 120 of the Reauthorized Magnuson-Stevens Act grants the Secretary the ability to extend the rebuilding period for summer flounder from January 1, 2010, to no later that January 1, 2013. Congress intended this provision to be used to mitigate negative socio-economic impacts of the lower TAL for all of the 2007 and subsequent fishing seasons in the rebuilding period, provided the criteria for utilizing the longer rebuilding period were met. In implementing the initial emergency rule, the Secretary determined that the criteria had been met. Extending the provisions of the emergency rule without notice and comment rule will foreclose that possibility that the lower TAL would go into effect and cause disruption of the summer flounder fishery and unnecessary adverse economic impacts. Such a waiver is consistent with both Congressional intent and the expectations of the public.

NMFS solicited public comment during the 30–day post-promulgation comment period on the measures contained in the initial emergency action and extended by this action. The comments received were considered and are addressed in the preamble to this rule; however, no change to the emergency action measures were enacted as a result of the comments received. The Council will be developing non-emergency measures for the 2008 fishing year that begins on January 1, 2008, to be implemented through notice and comment rulemaking. The public comments on the emergency rule will be considered in the context of that rulemaking.

The measures in this emergency rule extension continue to meet the fishing mortality objectives of the summer flounder fishery management plan and satisfies section 120 of the Reauthorized Magnuson-Stevens Act. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

Dated: June 8, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–11519 Filed 6–13–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 114
Thursday, June 14, 2007

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 101, 400, and 401

[Docket No. FAA–2007–27310; Notice No. 07–06]

RIN 2120–AI88

Requirements for Amateur Rocket Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing revisions to amateur rocket regulations and activities to preserve the level of safety associated with amateur rocketry. Current regulations are outdated and do not reflect current industry practice. This action would update our regulations and guidance for amateur rocket activities.

We propose to change the amateur rocket classifications, the way we collect information from operators of advanced amateur rocket launches, and the format of the regulations. In addition, we propose to address and correct minor inconsistencies in the present rules. We would take this action to update our regulations and align them with advances in the amateur rocket industry. We would also codify certain operating restrictions that are already widely used but are important enough to be required universally.

DATES: Send your comments on or before September 12, 2007.

ADDRESSES: You may send comments, identified by Docket No. FAA–2007–27310, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Charles P. Brinkman, Licensing and Safety Division (AST–200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–7715; or Ellen Crum, Office of Airspace and Rules, Air Traffic Organization, Federal Aviation Administration, 202–493–4562. For legal questions concerning this proposed rule contact Gary Michel, Office of the General Counsel, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–3148.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Sections 40102, 40103, 40113–40114, and 44701—44702. Under those sections, the FAA is charged with prescribing regulations that govern air traffic rules on the flight of aircraft (which include unmanned rockets). This regulation is within the scope of that authority because it defines classes of unmanned rockets and details the information the FAA would require to issue a waiver to allow launching of an amateur rocket.

Authority for this rulemaking is derived from the FAA's mission to regulate commercial launch activities in such a manner as to protect public health and safety and safety of property.

Table of Contents

I. Background

A. Regulatory History

Regulations governing unmanned rockets are found in Title 14 of the Code of Federal Regulations (14 CFR), Chapter I, part 101 and Chapter III, parts

400 through 499. The definitions of *rocket* and *amateur rocket activities* are found in 14 CFR 1.1 and 401.5, respectively.

In 1963, the Federal Government added the first regulations applying to the operations of unmanned rockets to 14 CFR part 101. Part 101 governs the safe operation of unmanned rockets in the National Airspace System (NAS). It requires the advance notice to and approval by the FAA for some rocket launches. The regulations ensure the safety of aircraft flying in the airspace and the safety of persons and property close to the launches. In 1963, the focus was on risks to persons and property near the launches. This was a reasonable focus because the model rockets did not have a great potential for creating hazards far from their launch points.

In 1984, Congress passed the Commercial Space Launch Act (CSLA), as codified and amended at 49 U.S.C. Subtitle IX—Commercial Space Transportation, chapter 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121. 65 FR 63922 (Oct. 25, 2000). The CSLA directs the Department of Transportation and thus the FAA, through delegations, to:

- Oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States,
- Exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States,
- Promote commercial space launches by the private sector, and
- Implement regulations in furtherance of the CSLA.

In 1988, we issued the ''Commercial Space Transportation Licensing Regulations''. Section 401.5 defined amateur rocket activities and exempted launches of limited performance rockets from licensing requirements. Amateur rocket activities are defined as rocket activity that meets all of the following conditions:

- Are conducted at a private site,
- Are powered by a motor or motors with a total impulse of 200,000 pound-seconds or less,
- Have a total burning or operating time of less than 15 seconds, and
- Have a ballistic coefficient of less than 12 pounds per square inch. (Ballistic coefficient is defined as the gross weight in pounds divided by the frontal area of the rocket vehicle.)

Neither the CSLA nor its legislative history revealed any intent by Congress for amateur rocket activities, which then were conducted primarily for recreational or educational purposes, to be licensed. Although the term amateur was used, and the majority of activity was not done for profit, the regulatory definition did not contain any provisions concerning financial interests.

In 1992, the National Association of Rocketry (NAR) and the Hobby Industry Association (HIA) petitioned the FAA to raise the upper weight limit on model rockets from 16 ounces (454 grams) to 53 ounces (approximately 1,500 grams). This request addressed the rapid development of larger model rockets. In response, the FAA amended part 101 to include a large model rocket category. The FAA acknowledged that organized rocket groups had done an admirable job in monitoring and preserving safety in launch activities. It also recognized that the larger model rockets posed a greater risk of collision with general aviation aircraft and a greater hazard to persons and property on the ground.

In 1995, the Commercial Space Transportation organization and its responsibilities were transferred from an Office under the DOT to a Line of Business under the FAA as the Office of Commercial Space Transportation (AST). The change in structure did not affect operations; AST continued to regulate rocket launches in the same manner as before.

The FAA, as a whole, regulates unmanned rocket activities through its Air Traffic and Commercial Space Transportation organizations. Air Traffic grants requests for airspace waivers and takes appropriate actions, such as issuing Notices To Airmen (NOTAMS). FAA Order 7400.2F contains operating procedures for Commercial Space Transportation to review rocket activities—specifically those operations where the maximum altitude is greater than 25,000 feet above ground level (AGL).

Regulations for licensed launches are found in 14 CFR parts 101 and 400 through 499, whereas regulations governing amateur rocket activity are found in 14 CFR part 101. Launches conducted by other U.S. Government agencies for the U.S. Government are not subject to FAA licensing requirements.

B. The Need for New Regulations

Historically, the FAA has relied on state and local regulation, voluntary self-regulation, and its own analysis to fulfill its oversight responsibility for unmanned rocket operations under part 101. The voluntary self-regulation has been carried out by the organizations sponsoring these activities. When we amended part 101 in 1994, we included provisions for large model rockets. The voluntary self-regulation and state and local regulations were effective for purposes of protecting public safety for model and large model rockets. However, amateur rocket performance has continued to improve and participation in amateur rocket launches has increased significantly. Therefore, the once remote possibility of an accident or incident resulting from amateur rocket activities has become more likely. The FAA now believes these activities need regulation appropriate for continued safe operation. This rulemaking is intended to preserve the safety record of amateur rocket activities, address inconsistencies, and clarify existing amateur rocket regulations.

1. Preserve Safety

The FAA currently receives airspace waiver requests for launches of rockets that can reach 328,000 feet (100 kilometers) or more. These launches are approaching altitudes where they could pose a threat to objects in orbit. The capability of rockets has advanced to a level far greater than contemplated by existing regulation. We believe any rocket launch that could potentially impact United States or international orbital assets should not be classified as an amateur rocket nor exempted from regulation. We propose to restrict amateur rocket activity to address this concern.

A rocket that flies higher can also travel further. Current regulations place no restrictions on range, and unintentionally allow amateur launch activities to expose a foreign country's persons and property to risk. The FAA believes that any rocket launch with potential foreign policy implications should not be classified as an amateur rocket activity nor exempted from regulation. We propose to restrict amateur rocket activity to address this concern.

The FAA has identified a need to receive technical data from operators of large amateur rockets in their initial applications to ensure public safety is maintained. The FAA protects people and property from the dangers of advanced rocket operations by using hazard areas and operating limitations. A hazard area is any region where there is a significant potential for harm from the rocket activity. Access to a hazard area is controlled or monitored by the operator (or by others through agreements) to protect the uninvolved public. To calculate these hazard areas and operational limitations, technical information about the rocket and its operations is needed. Currently, the waiver application process requires repeated correspondence between the applicant and the FAA to get the necessary information. This iterative process reduces the time available to the FAA to do analyses, and increases the chance of determining either an insufficient or excessive hazard area. Some recent amateur rocket launch attempts to reach 328,000 ft (100 km) have failed resulting in debris landing outside the calculated hazard areas. Hazard areas that are inaccurately defined can pose a risk to the public. The FAA proposes to collect the necessary information from operators of large amateur rockets as part of the waiver application. This would allow us to determine more accurate hazard areas without repeated requests for information.

The amateur rocket regulations were written when the amateur rocket community used mainly solid rocket motors. Since then the amateur rocket community has developed rocket engines that use liquid propellants. We propose to redefine amateur rocket activity to reflect this advanced rocket environment.

In addition, the FAA intends to update its regulations by codifying public safety practices that are already widely used.

2. Address Inconsistencies

The current regulations applicable to amateur rocket activities are inconsistent. For example, language in § 101.22(b) restricts operations ''* * * within 5 miles of an airport runway * * *'' Similar language in § 101.23(c) restricts operations ''* * * within five miles of the boundary of any airport.'' The FAA proposes to clarify and bring consistency to these regulations.

The current regulations are also inconsistent with current guidance and practice. Section 101.25 is inconsistent with FAA ATC Order 7930.2J, Sec. 4–1–1. The regulation requires that a person give information to FAA Air Traffic Control (ATC) ''* * *no less than 24 hours prior to and no more than 48 hours prior to beginning the operation.'' However, the FAA Order allows acceptance of the required information ''* * *provided the occurrence is no more than 3 days in the future.'' The FAA uses this information to create a Notice to Airmen (NOTAM).

In addition, the information currently given to ATC under § 101.25(c) is not precisely what the Air Traffic Organization uses to issue a NOTAM. For example, the size, weight, launch point, and number of rockets are not used to issue a NOTAM. However, the affected area, the center of its location (which is not always the same as the launch point), and the affected altitudes (from ground to the apogee of the highest-performing rocket) are required to determine boundaries for the NOTAM. By using specific terminology (for example, *affected altitudes* as opposed to *highest altitude*), the FAA would remove ambiguity and make consistent its use of terms.

The FAA's definition of ballistic coefficient is inconsistent with the industry definition. The definition of ballistic coefficient used currently by the FAA is weight divided by frontal area. However, ballistic coefficient (shown by the Greek letter β) is commonly defined in the aerospace technical literature as the weight divided by the product of the frontal area and a drag coefficient, such that

$$\beta = \frac{W}{A \cdot C_D}.$$

The FAA's current definition of ballistic coefficient ignores the shape of the rocket's nose cone (represented mathematically by the drag coefficient C_D). This inconsistency with the engineering community makes the existing requirement confusing and ignores the importance of nose cone shape. The FAA proposes changes to its regulations that would address this inconsistency.

3. Improve Clarity

Currently, the industry and FAA categorize rockets differently. This is because their categories served different purposes. The details of this are explained in a later section. However, using similar categories would improve clarity.

The amateur rocket regulations are written in multiple unit systems. The FAA prefers a consistent use of unit systems, and would use this rulemaking to denote both English and metric units on all terms.

C. Categories of Amateur Rockets

Rocket organizations and federal regulatory agencies use different categories and definitions to define amateur rocketry. Industry uses rocket categories to set operating procedures for amateur rocket events and for self-regulation. Likewise, it is important for the FAA to categorize amateur rocket activities into groups because different types of rockets have different effects on public safety.

1. Industry Categorization

Rocket organizations such as the National Association of Rocketry (NAR) and the Tripoli Rocketry Association (TRA) divide rockets into categories of model, high-power, and experimental.[1] A significant difference among these categories is total impulse. Total impulse is calculated by multiplying the average thrust (propulsive force) of a rocket motor by the total burn time. Total impulse is a good measure of rocket power and is commonly expressed in Newton-seconds (N-sec) or pound-seconds (lb-sec). The rocket organizations classify motors according to total impulse, and categorize them alphabetically, as shown in Table 1. Each category is described below.

TABLE 1.—RANGE OF TOTAL IMPULSE FOR SPECIFIED MOTOR CLASS

Installed total impulse (N-sec)	Equivalent motor class
0–2.50	A
2.51–5.00	B
5.01–10.00	C
10.01–20.00	D
20.01–40.00	E
40.01–80.00	F
80.01–160.00	G
160.01–320.00	H
320.01–640.00	I
640.01–1280.00	J
1280.01–2560.00	K
2560.01–5120.00	L
5120.01–10,240.00	M
10,240.01–20,480.00	N
20,480.01–40,960.00	O
40,960.01–81,920.00	P
81,920.01–163,840.00	Q

Model rockets make up the low-power end of amateur rocket activity, and are comprised of all rocket motors from A through G. Model rockets typically are made of paper, wood, or breakable plastic and contain no substantial metal parts.

High-power rockets are the next level up from model rocketry and encompass rocket motor classes H through O, or 160 to 40,960 N-secs (35.97 to 9208 lb-sec). Some of these vehicles have sophisticated electronics to open parachutes or ignite added stages. Operators of high-power rockets are usually associated with either NAR or

[1] The NAR and the TRA are two major rocket organizations. Each has a safety code to protect its members and the public during rocket activities. The NAR and the TRA safety codes were originally developed from safety codes published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts. The NFPA has published two safety codes for rocketry: (1) NFPA 1122, which covers model rocketry, and (2) NFPA 1127, which covers high-power rocketry. NFPA 1127 includes requirements for rocket construction, launch sites and launches, and requirements for rocket motor use including motor testing and certification. All participants in NAR- and TRA-sanctioned launch events promise to follow their respective safety codes.

TRA, and are obliged by their membership to follow the associated safety codes of those organizations.

A rocket using non-certified solid rocket motors, an engine using a liquid oxidizer and fuel, or a solid rocket motor or motors producing more than 81,920 N-sec (18,409 lb-secs) of total impulse have sometimes been labeled experimental by various rocketry organizations. Experimental rocketry is a relatively small part of amateur rocket activities as most hobbyists lack expertise and manufacturing ability to design and build higher-powered solid or liquid rocket engines.

2. Current FAA Categorization

Currently, the FAA defines and categorizes unmanned rocketry into three groups: Model rockets, large model rockets, and ''Other''—everything within unmanned rocketry that falls outside the first two categories. The FAA distinguishes categories by the weight of propellant used, total weight of the rocket, and the manner in which the rocket is operated.

Model Rockets

In the applicability section, specifically § 101.1(a)(3)(ii), model rockets are exempt from all remaining part 101 regulations. This is any model rocket that:

(a) Uses not more than four ounces of propellant;

(b) Uses a slow-burning propellant;

(c) Is made of paper, wood, or breakable plastic, and contains no substantial metal parts;

(d) Weighs not more than 16 ounces, including the propellant; and

(e) Is operated in a manner that does not create a hazard to persons, property, or other aircraft.

Large Model Rockets

Large model rockets are defined by the FAA in § 101.22 as model rockets that meet the following conditions:

(a) Uses not more than 125 grams of propellant;

(b) Is constructed of paper, wood, or breakable plastic, and contains no substantial metal parts; and

(c) Weighs not more than 1,500 grams (including propellant).

If the operator of a large model rocket complies with all provisions of § 101.25 (ATC Notice Requirements), then the operator is exempt from § 101.23 (b), (g) and (h). These are the operating restrictions on entering controlled airspace, operating within 1,500 feet of any unassociated person or property, and operating between sunset and sunrise, respectively. An operator is also exempt from § 101.23(c) (operating within 5 miles of an airport runway) if the operator provides a copy of the notification required by ATC to the airport manager. Finally, if launching into restricted airspace, only § 101.23(g) (1,500 ft setback distance) applies.

''Other''—Any unmanned rocket that cannot be categorized as a Model Rocket or a Large Model Rocket

The FAA defines only the two previous categories of rockets under part 101. Nevertheless, all other unmanned rocket activity that falls outside these categories is covered under part 101, and must comply with all operating limitations in § 101.23 and ATC Notice Requirements in § 101.25. The only exception to the operating limitations in §§ 101.23 and 101.25 is if launching into restricted airspace. In this case only the 1,500-foot setback distance in § 101.23(g) for unassociated people and property applies.

II. Comments from Public Meeting

On February 28, 2000, the FAA began a two-week public forum on the Internet to invite comments and information from the public on regulating launches of small-scale rockets. (At the time, the FAA was considering changing the term amateur to small-scale.) The two-week online forum was followed by two weeks of written comments to a docket. The online public forum was conducted instead of an Advanced Notice of Proposed Rulemaking (ANPRM) or more traditional public meetings. The FAA posed the following questions:

- Does defining amateur rocket activity accurately and adequately exclude from FAA regulatory and licensing scrutiny those activities thought to be either inherently safe, or adequately covered by state, local, or Federal regulation?
- If not, what would be a better definition?
- Should there be a category of launch activity that would not be licensed but would have certain regulatory requirements imposed by the FAA?
- If so, what should those requirements address?

About 35 people took part in the online discussion, which produced over 150 pages of text. Six more comments were received during the written comment period.

The preliminary conclusion of the public online forum was the current definition of amateur rocket activity was inadequate—it did not exclude some activities from FAA regulatory scrutiny that might be inherently safe.[2] Although several ideas were expressed about what factors should be part of a definition, there was no consensus about what amateur rocket activity should encompass.

The written comments from the public forum are available at *http://dms.dot.gov/*; docket number FAA–1999–6574. To find it, enter the last four digits of the docket number into the search box.

III. Discussion of the Proposed Regulatory Requirements

The following sections describe in detail the rationale for the proposed regulations. This rationale is intended to serve as a guide and add clarity to the meaning of the regulations. The proposed changes are addressed in numerical order, and each consists of a description of the change followed by the rationale for the change.

A. Part 1 Definitions and Abbreviations

The FAA proposes to move and change the definition of *amateur rocket activities*. We would move the definition of *amateur rocket activities* from § 401.5 to § 1.1 under the term *amateur rocket*. We would change the definition to read as follows:

An amateur rocket is a rocket that:

- Is propelled by a motor or motors having a combined total impulse of 889,600 N-sec (200,000 lb-sec) or less, and
- Cannot reach an altitude greater than 150 kilometers (93.2 statue miles) above the earth's surface.

Further, we would add the following operating limitations to part 101:

- Is launched on a suborbital trajectory;
- When launched, must not cross into the territory of a foreign country unless there is an international agreement permitting such activity; and
- Is unmanned.

We believe these parameters and operating limitations better reflect those operations that should be exempt from the part 400 licensing or permitting process than the parameters used today. The proposed definition of amateur rocket keeps the same total impulse criterion as in the current definition, discards the criteria of private site, burn time, and ballistic coefficient, and adds an altitude restriction. New operating limitations would require that amateur rocket launches be suborbital, not reach foreign territories, and be unmanned.

[2] The online participants intended the phrase ''inherently safe'' to mean safe for the public, or adequately covered by state, local or other Federal regulation.

Total Impulse

The FAA proposes to keep the current total impulse limit for amateur rocketry. We would keep the value of 200,000 lb-secs, which converts to 889,600 N-sec, as the cutoff point because it best describes the launch vehicle size, power, performance, and the potential public safety impacts. It has also been used successfully for over 18 years.

Maximum Altitude

The FAA believes that a rocket able to exceed an altitude of 150 km (93.2 miles) would not be an amateur rocket. Therefore, we propose to add this altitude limit to the definition. This would ensure an amateur rocket will not affect manned spacecraft and would virtually ensure that it will not affect any operational satellites. Space shuttle history shows a lowest orbit of 226 km (141.2 miles). The international space station maintains a minimum altitude of 310 km (193.7 miles). Based on our analysis of catalogs of all orbiting objects, there are approximately 9 to 11 active satellites with perigees lower than 150 km. Because there are so few active satellites orbiting below 150 km, the FAA believes allowing amateur rocket launches to reach 150 km does not create an unacceptable hazard. Rocket operations exceeding 150 km could pose a threat to operational spacecraft and should be subject to the licensing or permitting process.

Suborbital Trajectory

The FAA proposes that amateur rocket launches be limited to suborbital trajectories. Although the maximum altitude restriction of 150 km (93.2 miles) should preclude the launch from placing an object into orbit, we want to remove any possibility that an object can reach orbit.

Foreign Territory

The FAA proposes that amateur rockets not be launched in a manner where they could reach foreign territory unless an agreement is in place between the United States and the foreign government. This restriction would eliminate any potential international implications associated with amateur rockets. Rockets with international implications should not be considered amateur nor be exempt from the licensing or permitting process.

Unmanned

The FAA proposes that amateur rockets be unmanned. In 2004, Congress legislatively ordered that manned launches require a license or a permit (Commercial Space Launch Amendments Act). The proposed requirement ensures compliance with this Act.

Burn Time

The FAA proposes to remove burn time as a criterion for distinguishing amateur rockets from non-amateur rockets. This criterion is inappropriate for two reasons.

First, burn time should no longer be used to determine risk qualitatively because of the introduction into the amateur rocket community of rocket engines that use liquid propellants. When the regulations were originally written, rockets with similar burn times generally had similar designs. The burning rates of solid propellants used by the amateur community (excluding model rockets) did not vary significantly from one propellant to another. Rockets with similar burn times most likely had similar amounts of propellant and potential energy. This is no longer the case. One important difference between rockets that operate using liquid propellants (informally, *liquid rockets*) and rockets that operate using solid propellants (informally, *solid rockets*) is the former can be throttled. Liquid rockets typically have valves for controlling the flow of liquid into the combustion chamber. This allows the operators to regulate their use of propellants as necessary. Because of this flexibility, the burn time of a liquid rocket does not necessarily correspond to its potential energy. This difference argues that burn time should not be used as a criterion to determine the potential safety aspects of a liquid rocket.

The second reason for removing burn time as a criterion is that current regulations unnecessarily drive rocket design. In order to ensure that amateur rockets stay under the burn time limit, and thus remain amateur, while maximizing performance, operators have introduced design elements, such as increased thrust and acceleration that introduce a safety concern. Operators of liquid rockets have faced similar pressures when designing their flight paths, and have often opted for less safe, higher-acceleration burns for the same reasons. Higher accelerations on a rocket can make failures more common, as the stresses involved are larger.

Ballistic Coefficient

The FAA proposes to remove ballistic coefficient as a criterion for several reasons:

1. A rocket with a ballistic coefficient of less than 12 lbs/in^2 can still impact with enough kinetic energy and explosive potential to be dangerous. Therefore, the restriction does not noticeably contribute to safety.

2. The goal of restricting certain parameters is containment within a specified area to minimize risk to the public. By explicitly restricting the altitude (150 km) and indirectly restricting the range (no foreign territory) of a rocket, we would more directly capture the intended result making the restriction on ballistic coefficient unnecessary.

3. The existing definition of ballistic coefficient used by the FAA is inconsistent with the definition common to the field of aerodynamics. This inconsistency makes the existing requirement confusing and ignores the importance of shape.

Private Site

The FAA proposes to remove from the definition of amateur rocket the requirement to launch from a private site. This is because public safety issues do not depend on this distinction. This restriction unnecessarily burdens both the amateur rocket operator and the FAA.

B. Part 101

1. Section 101.1 Applicability (Subpart A—General)

The FAA proposes to move the rules governing the operation of model rockets from Subpart A—General (§ 101.1) to Subpart C—Unmanned Rockets (§ 101.21). This proposal would align all definitions and operating requirements pertaining to unmanned rockets in a single subpart. We would continue to allow model rockets to operate without FAA oversight.

2. Section 101.21 Applicability (Subpart C—Unmanned Rockets)

The FAA proposes to clarify part 101 by adding two new categories of amateur rocket operations and amending the definitions of the existing categories. We propose to number these categories from Class 1 to Class 4. The two new categories would be Class 3 (high-power rocket) and Class 4 (advanced high-power rocket). Class 1 and Class 2 rockets would be defined using the current definitions of model rocket and large model rocket, respectively. The new categories capture amateur rockets that require significant analyses or operational constraints to preserve safety.

Class 1—Model Rockets

The proposed Class 1-Model Rockets category takes the place of the current model rocket category with roughly the same definition. Class 1 would be defined as an amateur rocket using less than 125 grams (4.4 ounces) of slow-burning propellant, made primarily of paper, wood, or breakable plastic, containing no substantial metal parts, and weighing no more than 454 grams (16 ounces), including the propellant. This definition differs from the existing definition in two ways—maximum propellant weight and operating limitations.

The maximum propellant weight would be increased from the existing 4 ounces to 4.4 ounces, and metric units would also be included in the regulatory text. This change would be made to close the gap in propellant weight between Class 1 and Class 2 rockets. The small increase in maximum propellant weight would not pose an increased risk to the public.

The existing definition also contains an operating limitation. A model rocket is defined as a rocket ''operated in a manner that does not create a hazard to persons, property, or other aircraft.'' However, definitions that include operating limitations can be confusing. For example, a model rocket is a model rocket whether it is operated safely or not. We would keep the operating limitation, but would move it outside the categorical definition.

Class 2—Large Model Rockets

The proposed definition of Class 2—Large Model Rockets would, like Class 1, move the operating restrictions from the definition to another area of the regulations. With this change, proposed Class 2 would only differ from Class 1 in maximum total weight. Class 2 would continue to allow up to 1,500 grams (53 ounces), including propellant, in contrast to 454 grams (16 ounces) allowed by Class 1.

Class 3—High-Power Rockets

The FAA proposes to add the term Class 3—High-Power Rockets, which would be defined as an amateur rocket other than a model rocket or large model rocket that is propelled by a motor or motors having a combined total impulse of 163,840 N-sec (36,818 lb-sec) or less. In terms of motor class, this is either a P or a Q motor.

The FAA proposes to use total impulse as the distinguishing criterion for high-power rockets because total impulse is a good measure of the size, power, and performance of the rocket. Each of these factors is important for public safety. We propose the total impulse limit because rockets of this size have not required extensive analyses in the past to be launched safely.

Class 4—Advanced High-Power Rockets

The FAA proposes to add the term Class 4—Advanced High-Power Rockets, which would be any amateur rocket that cannot meet one of the other three Classes. In general, these will be rockets with a combined total impulse above 163,840 N-sec (36,818 lb-sec), that is, a Q-motor. However, the regulation would be written such that other, unforeseen operations or advancements in amateur rocket technology will be captured as Class 4.

The risk to the public from launches of this category is often higher due to the large amount of propellant or stored energy within the vehicle. This higher risk factor requires greater scrutiny. As proposed, the Class 4 captures rockets more powerful than those commonly launched at high-power rocket events.

Table 2 summarizes the proposed amateur rocket categories.

TABLE 2.—PROPOSED AMATEUR ROCKET CATEGORIES

Amateur Rocket:
- Is propelled by a rocket motor or motors having a combined nominal total impulse of 889,600 N-sec (200,000 lb-sec) or less.
- Cannot reach an altitude of greater than 150 kilometers (492,120 feet).
- Must not be launched so that it could reach the territory of a foreign country unless there is an international agreement permitting such activity.
- Is launched on a suborbital trajectory.
- Is unmanned.

The following categories are recognized currently under part 101 and are kept unchanged: [3]

Class 1—Model Rockets:
- Uses no more than 125 grams (4.4 ounces) of propellant.
- Uses a slow-burning propellant.
- Is made of paper, wood, or breakable plastic.
- Contains no substantial metal parts.
- Weighs no more than 454 grams (16 ounces), including the propellant.

Class 2—Large Model Rockets:
- Uses no more than 125 grams (4.4 ounces) of propellant.
- Uses a slow-burning propellant.
- Is made of paper, wood, or breakable plastic.
- Contains no substantial metal parts.
- Weighs no more than 1,500 grams (53 ounces) including propellant.

The following are the proposed added sub-categories for Part 101:

Class 3—High-Power Rockets:
- A rocket other than a Class 1 or Class 2, propelled by a rocket motor or motors having a combined total impulse of 163,840 N-sec (36,818 lb-sec) or less.

Class 4—Advanced High-Power Rockets:
- Any amateur rocket other than a Class 1, 2, or 3.

[3] There is a very minor change to the definition of Class 1—Model Rockets. The maximum propellant weight is increased from 4 ounces to 4.4 ounces.

Other Changes to § 101.21

The FAA also proposes to revise § 101.21 so that it will reference 14 CFR chapter III, the commercial space transportation regulations for licensed or permitted launches. Proposed § 101.21 would state that a person operating an unmanned rocket other than an amateur rocket must comply with 14 CFR Chapter III. This change is proposed to alert new operators to existing regulatory requirements.

3. Operating Limitations

As previously stated, the FAA currently combines operating limitations for model rockets and large model rockets within their respective definitions. The FAA proposes to separate operating limitations from the rocket definitions. Each rocket class will have a separate section under part 101 addressing the operating limitations for that class. Operating limitations will be addressed in a tiered approach with the limitations for each rocket class building on top of the previous rocket class. The proposed operating limitations are described below in the order they would appear in part 101.

Rockets within all classes would have the following operating limitations:

- Must be launched on a suborbital trajectory;
- Must not cross into the territory of a foreign country unless there is an international agreement permitting such activity; and
- Must be unmanned.

Operating Limitations for Class 1—Model Rockets

The proposed operating limitations for Class 1—Model Rockets would not differ from the current operating limitations. A model rocket must still be ''operated in a manner that does not create a hazard to persons, property, or other aircraft.''

Operating Limitations for Class 2—Large Model Rockets

The proposed operating limitations for Class 2—Large Model Rockets would differ only slightly from the current limitations. The phrase ''airport runway or other landing area'' would change to ''airport boundary.'' This change would be made for consistency. Further, current operating limitations for large model rockets, which can be found in §§ 101.22 and 101.23, would be consolidated into a single section for clarity.

Operating Limitations for Class 3—High-Power Rockets

The proposed rule places new operating limitations on Class 3—High-Power Rockets. Currently, rockets that would be Class 3 operate under the provisions for Large Model Rockets. These limitations remain unchanged, and two more limitations codifying current practice would be added.

The first of the new limitations would be that a person at least eighteen years old must be present and in charge of ensuring the safety of the operation. This has been common practice, but it is important to codify the best practices to ensure they are preserved.

The second new limitation would require reasonable precautions to report and control a fire. It is prudent and important that operators understand and mitigate the safety hazards of their rockets, including fire. Operators should have a means of controlling small fires (such as brush fires caused by motor ignition) without putting themselves at risk. Operators should also be able to report promptly to a local fire department the location of any fire that they cannot control. This is also current practice that we would codify with this rulemaking.

Operating Limitations for Class 4—Advanced High-Power Rockets

In addition to the General Operating Limitations of proposed § 101.22 and the operating limitations contained in proposed § 101.25, the FAA may specify operating limitations necessary to ensure that air traffic is not adversely affected and public safety is not jeopardized. As discussed earlier, the proposal is intended to address unforeseen operations or advancements in amateur rocket technology.

4. Section 101.27 Notice Requirements

The notice requirements that are currently in § 101.25 would be moved to § 101.27 and updated by this rulemaking. While the notification requirements would be similar to the current requirements, the terminology would more closely match current practice, and would help prevent miscommunication between a rocket operator and a local air traffic controller. Tables 3 and 4 show the current and proposed notification requirements.

In Table 3, Classes 2, 3 & 4 are all included under Large Model Rockets.

TABLE 3.—CURRENT ATC NOTICE REQUIREMENTS FOR AMATEUR ROCKET LAUNCHES

	Model rockets	Large model rockets
Required Information:		
Operator information (name, address, etc.)	....	X
Number of rockets	....	X
Size and weight of each rocket	....	X
Highest altitudes (MSL)	....	X
Location of launch (Lat & Long)	....	X
Date, time and duration of launch	....	X
Other information requested by the FAA	....	X

TABLE 4.—PROPOSED ATC NOTICE REQUIREMENTS FOR AMATEUR ROCKET LAUNCHES

	Class 1—model rockets	Class 2—large model rockets	Class 3—high-power rockets	Class 4—advanced high-power rockets
Required Information:				
Operator information (name, address, etc.)	....	X	X	X
Affected altitudes (MSL)	....	X	X	X
Location of launch (Lat & Long)	....	X	X	X
Date, time and duration of launch	....	X	X	X
Other information requested by the FAA	....	X	X	X
Location of the center of the affected area in latitude and longitude	....	....	X	X

NOTAM Submission Timeline

The FAA proposes to change the submission timeline requirements to match current practice and guidance. Currently, § 101.25 requires ATC notification to be given to the nearest FAA ATC ''no less than 24 hours and no more than 48 hours prior to beginning the operation.'' The FAA proposes to change this timeline to ''no less than 24 hours before and no more than 3 days before beginning the operation.'' This change would make FAA regulations consistent with current guidance as documented in ATC Order 7930.2J, Sec. 4–1–1, and with current practice.

5. Section 101.29 Information Requirements

Currently, an operator wishing to launch a rocket into controlled airspace files Form 7711–2 before the operation to request authorization. The FAA uses the information submitted on this form to calculate hazard areas and operating restrictions, and to impose terms and conditions that preserve an adequate level of safety for the public. This rulemaking proposes to codify the current information gathering process for larger amateur rockets (Classes 3 and 4). This will allow the level of risk to the public to be managed adequately as the activity grows. By codifying the required information, the safety process would become more standardized and streamlined. This, in turn, would improve safety and facilitate the activity by establishing clear regulatory paths.

For a Class 3 or Class 4 rocket operation, a person would complete FAA Form 7711–2 and send it (in triplicate) to the FAA so that it is received at least 45 days before the proposed operation. The minimum amount of time the FAA needs to process and evaluate the public safety implications of a launch is 45 days. An amateur rocket with advanced technology or other complicated systems could take more time to evaluate. Therefore, we encourage persons who plan to launch such rockets to contact the FAA as early as practical.

Due to the low risk posed by Class 1—Model Rockets, operators of this class rocket would continue to be exempt from information requirements. The information requirements for Class 2—Large Model Rockets would remain the same. Table 5 summarizes the proposed information requirements.

TABLE 5.—PROPOSED INFORMATION FOR SUBMISSION TO THE FAA

	Unmanned rockets				
	Amateur rocket classes				Other—government and FAA-licensed launches
	Class 1—model rockets	Class 2—large model rockets	Class 3—high-power rockets	Class 4—advance high-power rockets	
Notice requirements	....	•	•	•	•
Operator: Name(s) and Address(es)	....	•	•	•	•
Affected altitudes [formerly Highest Altitude]	....	•	•	•	•
Affected Area and location of center [formerly Location of launch]	....	•	•	•	•
Date/time/duration	....	•	•	•	•
Other pertinent information requested by the FAA	....	•	•	•	•
Additional Information Requirements	None	None	Additional below.	Additional below.	None.
Submission of Form 7711–2 (time before event)	Not required	Not required	45 days	45 days	45 days.
Estimated number of rockets in each total impulse class	....	....	•	•	
Type of propulsion, fuel(s), oxidizer(s), manufacturer, and certification, if any.	....	....	•	•	
Description of launcher(s) planned to be used, including any airborne platform(s).	....	....	•	•	
Description of recovery system	....	....	•	•	
Description of how applicant will meet operating limitations of § 101.25	....	....	•	•	
Highest altitude, above ground level, expected to be reached	....	....	•	•	
Launch site latitude, longitude, and elevation	....	....	•	•	
Any additional safety procedures that will be followed	....	....	•	•	
Maximum possible range	....	....	....	•	
Dynamic stability characteristics for the entire flight profile	....	....	....	•	
Description of all major rocket systems	....	....	....	•	
Description of other support equipment necessary for safe operation	....	....	....	•	
Planned flight profile and sequence of events	....	....	....	•	
All nominal impact areas within three standard deviations	....	....	....	•	
Launch commit criteria	....	....	....	•	
Countdown procedures	....	....	....	•	
Description of how applicant will meet operating limitations of § 101.26	....	....	....	•	
Mishap procedures	....	....	....	•	

The FAA only proposes to codify current reporting practices for the new categories of Class 3 and Class 4 rockets. An operator of a Class 4 rocket would have to conduct technical analyses to get some of the required information. These analyses demand more technical knowledge than the simpler information requirements of Class 3 rockets. The FAA believes that this is an appropriate requirement because of the risk to the public that these advanced rockets can pose.

Any applicant proposing to launch above 7,620 meters (25,000 feet) above ground level, is encouraged to follow the FAA guidance document, ''Supplemental Application Guidance for Unguided Suborbital Launch Vehicles, August 1998,'' available at *http://www.faa.gov/about/office_org/headquarters_offices/ast/licenses_permits/launch_reentry/reusable/safety/guidelines/sag_uslv/*.

Following the guidance provided in this document will help the FAA determine suitable terms and conditions to attach to a part 101 waiver, and will help streamline the approval process.

Operators falling under the ''Other'' category (government-conducted and FAA-licensed launches) would continue to file the same data they currently enter on Form 7711–2. The FAA would rely on the established safety processes to capture and evaluate the safety of this kind of launch.

C. Proposed Changes to Chapter III

Existing §§ 400.2, 401.5 and 420.3 would be modified to accommodate the new regulatory structure proposed.

1. Section 400.2 Scope

The proposed change to § 400.2 is to replace ''amateur rocket activities'' with ''activities of amateur rockets, as defined in 14 CFR § 1.1.'' This change is necessary because of adding the definition of *amateur rocket* to § 1.1 and the proposed changes mentioned below.

2. Section 401.5 Definitions

Section 401.5 would be amended by deleting the definition ''amateur rocket activities,'' because it is proposed to be defined in 14 CFR part 1.

3. Section 420.3 Applicability

Existing § 420.3 would be modified to reference the definition of amateur rocket activities in part 1 instead of § 401.5.

IV. Paperwork Reduction Act

Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0027.

V. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

VI. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination is explained below.

The proposed rule defines four classes of amateur rockets that essentially incorporate the existing classifications. Therefore, no additional costs are expected as a result of the new classifications.

These proposed definitions reflect current industry practice. A positive effect of the proposed new classifications and definitions is that they allow for the unlicensed launching of liquid rockets at their optimum burn rates. Today, someone who wanted to launch a liquid rocket at its optimum burn rate would have to obtain a license that requires complicated analyses that can cost up to $100,000. An alternative would be to adjust the burn rate of the proposed liquid rocket to meet the current requirements. This alternative would result in either reduced rocket performance or reduced rocket safety. Therefore, the proposed rule provides both potential cost savings and performance and safety improvements.

The remaining provisions of the proposed rule primarily update the existing rules to reflect current industry practice and streamline the FAA data collection process. The proposed rule would clarify the required information that is currently provided to the FAA before a launch in a paper form. This information submittal would result in saving time for launchers and for the FAA as we currently collect some of this information by telephone before a launch.

The proposed rule would have virtually no impact upon the proposed Class 1 and 2 rockets. These classes would continue to operate essentially the same as they did before the proposed rule. The information requirements discussed above apply primarily to the proposed Class 3—High-Power Rocket and Class 4—Advanced High-Power Rockets categories. However, much of this data is already required to be provided to the FAA before a proposed launch. In many cases, the FAA calls the launch operator before the proposed launch and requests additional information. Therefore, the proposed rule does not increase the information required for a proposed launch, but rather formalizes and streamlines the process of providing the information to the FAA prior to the launch. Therefore, the FAA estimates that any incremental costs associated with this proposed rule would be minimal.

An example of the potential effects of the proposed rule is provided by a launch proposed by Montana State University in 2006. The University proposed the launch under the existing rules.[4] However, because the existing application form did not specify all the information needed by the FAA, we requested the remaining information by telephone. Under the proposed rule, their launch would be categorized as a Class 3 launch. The revised form for the University would specifically list all of the necessary information. This form would streamline and speed up the application process for both the University and the FAA.[5] The proposed rule would have a similar effect upon proposed class 4 launches.

The proposed rule provides benefits. As listed below, this proposed rule would:

- Proactively preserve the existing high safety level of amateur rocket activities;
- Update the Federal Aviation Regulations to reflect current industry standards and procedures;
- Eliminate inconsistencies in the existing rules;
- Provide new definitions of amateur rocket categories that would allow amateur rocketeers to more easily

[4] The University submitted an application with the basic information required to the FAA.

[5] Their proposed launch occurred in 2006.

determine what, if any, regulations they would have to comply with;

- Allow unlicensed launches of liquid rockets at optimum performance levels;
- Streamline and clarify the data collection process in cases where a proposed launch would require that the launches proposer provide data to the FAA;
- Insure that amateur rocket activities would be conducted in accordance with all international treaties;
- Insure that amateur rocket activities would not interfere with objects in orbit.

U.S. amateur rocketeers may receive cost savings by clarifications in the FAA requirements for amateur rocket activities. The proposed clarifications should make it quicker and easier for launch applicants to provide the needed information to the FAA. The FAA is likely also to incur cost savings because of this. The FAA, however, has not attempted to quantify the cost savings that may accrue due to this specific proposed rule.

The expected outcome of the proposed rule would be a minimal cost impact with positive net benefits. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

Based on the minimal cost finding the FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

A. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect a large number of small entities. These small entities would include the individuals, organizations, and firms involved in launching amateur rockets. However, although the proposed rule would affect a large number of small entities, the impact of the proposed rule is expected to be minimal. The proposed rule would have virtually no impact upon the proposed Class 1 and 2 rockets. These classes would continue to operate essentially the same as they did before the proposed rule. The proposed rule would have some effect on the proposed Class 3 and 4 rockets. However, the major effect is expected to be a change in the way that pre-launch information is provided to the FAA. The proposed procedures are expected to reduce application approvals and therefore lower costs for launchers of Class 3 and Class 4 rockets.

Therefore the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments, with supporting data, regarding this determination.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The proposed rule would not have an impact on international trade because it applies only to launches conducted in the United States. The proposed rule would, however, insure compliance with all international treaties with respect to space and amateur rocket launches would be complied with. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on international trade.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

VII. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

VIII. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

X. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section, which appears at the end of this preamble, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

B. Addresses

You may send comments identified by Docket Number FAA–2007–27310 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *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.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion under the Comments Invited section.

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., Monday through Friday, except Federal holidays.

C. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Department of Transportation's DMS referenced in paragraph (1).

List of Subjects in 14 CFR Parts 1, 101, 400, and 401

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 1, 101, 400, 401, and 420 of Title 14, Code of Federal Regulations, as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Add in alphabetical order the following definition for ''amateur rocket'' to § 1.1:

§ 1.1 General definitions.

Amateur rocket means an unmanned rocket that:

(1) Is propelled by a motor or motors having a combined total impulse of 889,600 Newton-seconds (200,000 pound-seconds) or less; and

(2) Cannot reach an altitude greater than 150 kilometers (93.2 statue miles) above the earth's surface.

PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

3. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

4. Amend § 101.1 by revising paragraph (a)(3) to read as follows:

§ 101.1 Applicability.

(a) * * *

(3) Any unmanned rocket except aerial firework displays.

* * * * *

5. Revise § 101.21 to read as follows:

§ 101.21 Applicability and definitions.

(a) This subpart applies to operating unmanned rockets. However, a person operating an unmanned rocket within a restricted area must comply only with § 101.25(d) and with any additional limitations imposed by the using or controlling agency.

(b) A person operating an unmanned rocket other than an amateur rocket as defined in § 1.1 must comply with 14 CFR Chapter III.

(c) The following definitions apply to this subpart:

(1) Class 1—Model rocket means an amateur rocket that:

(i) Uses no more than 125 grams (4.4 ounces) of propellant;

(ii) Uses a slow-burning propellant;

(iii) Is made of paper, wood, or breakable plastic;

(iv) Contains no substantial metal parts; and

(v) Weighs no more than 454 grams (16 ounces), including the propellant.

(2) Class 2—Large model rocket means an amateur rocket other than a model rocket, that:

(i) Uses no more than 125 grams (4.4 ounces) of propellant;

(ii) Uses a slow-burning propellant;

(iii) Is made of paper, wood, or breakable plastic;

(iv) Contains no substantial metal parts; and

(v) Weighs no more than 1,500 grams (53 ounces), including the propellant.

(3) Class 3—High-power rocket means an amateur rocket other than a model rocket or large model rocket that is propelled by a motor or motors having a combined total impulse of 163,840 Newton-seconds (36,818 pound-seconds) or less.

(4) Class 4—Advanced high-power rocket means an amateur rocket other than a model rocket, large model rocket, or high-power rocket.

6. Revise § 101.22 to read as follows:

§ 101.22 General operating limitations.

(a) An amateur rocket must be operated in such a manner that it:

(1) Is launched on a suborbital trajectory;

(2) When launched, must not cross into the territory of a foreign country unless an agreement is in place between the United States and the country of concern; and

(3) Is unmanned.

(b) The FAA may specify additional operating limitations necessary to ensure that air traffic is not adversely affected, and public safety is not jeopardized.

7. Revise 101.23 to read as follows:

§ 101.23 Operating Limitations for Class 1—Model Rockets.

In addition to the General Operating Limitations of § 101.22, persons operating a Class 1—Model Rocket must operate the rocket in a manner that does not create a hazard to persons, property, or other aircraft.

8. Add § 101.24 to Subpart C to read as follows:

§ 101.24 Operating Limitations for Class 2—Large Model Rockets.

In addition to the General Operating Limitations of § 101.22, no person may operate a Class 2—Large Model Rocket—

(a) In a manner that creates a hazard to persons, property, or other aircraft;

(b) At any altitude where clouds or obscuring phenomena of more than five-tenths coverage prevails;

(c) At any altitude where the horizontal visibility is less than five miles; and

(d) Into any cloud;

(e) Unless that person complies with § 101.27; and,

(f) Within 8 kilometers (5 miles) of any airport boundary unless the information required in § 101.27 is provided to the manager of the airport.

9. Revise § 101.25 to read as follows:

§ 101.25 Operating Limitations for Class 3—High Power Rockets.

In addition to the General Operating Limitations of § 101.22, no person may operate a Class 3—High-Power Rocket—

(a) Unless that person complies with § 101.24 except paragraph (f);

(b) Within 8 kilometers (5 miles) of any airport boundary;

(c) In controlled airspace without prior authorization from the FAA in accordance with § 101.29(a) of this part;

(d) Within 457 meters (1,500 feet) of any person or property that is not associated with the operations;

(e) Between sunset and sunrise;

(f) Unless a person at least eighteen years old is present, is charged with ensuring the safety of the operation, and has final approval authority for initiating high-power rocket flight; and

(g) Unless reasonable precautions are provided to report and control a fire caused by rocket activity.

10. Add new § 101.26 to Subpart C to read as follows:

§ 101.26 Operating Limitations for Class 4—Advanced High Power Rockets.

In addition to the General Operating Limitations of § 101.22 and the operating limitations contained in § 101.25 of this part, the FAA may specify other operating limitations for Class 4—Advanced High Power Rockets necessary to ensure that air traffic is not adversely affected, and public safety is not jeopardized.

11. Add § 101.27 to Subpart C to read as follows

§ 101.27 Notice requirements.

ATC notification for all launches. No person may operate an unmanned rocket other than a Class 1—Model Rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours before and no more than three days before beginning the operation:

(a) The names and addresses of the operators; except when there are multiple participants at a single event, the name and address of the person so designated as the event launch coordinator, whose duties include coordination of the required launch data estimates and coordinating the launch event;

(b) Date/time the activity will begin;

(c) Size of the affected area in a nautical mile radius;

(d) Location of the center of the affected area in latitude and longitude coordinates;

(e) Highest affected altitude;

(f) Duration of the activity;

(g) Any other pertinent information requested by the ATC facility.

12. Add § 101.29 to Subpart D to read as follows:

§ 101.29 Information requirements.

(a) *Information requirements for operating Class 3—High-Power Rockets.* A person operating one or more Class 3—High Power Rockets in controlled airspace must provide the information below on each rocket to the FAA at least 45 days before the proposed operation. The FAA may request additional information if necessary to ensure the proposed operations can be safely conducted. The information shall include:

(1) Estimated number of rockets to be operated in each class,

(2) Type of propulsion, fuel(s), oxidizer(s), manufacturer, and certification, if any,

(3) Description of the launcher(s) planned to be used, including any airborne platform(s),

(4) Description of recovery system,

(5) Description of how applicant will meet § 101.25 (Operating Limitations for Class 3—High Power Rockets).

(6) Highest altitude, above ground level, expected to be reached,

(7) Launch site latitude, longitude, and elevation.

(8) Any additional safety procedures that will be followed.

(b) *Information requirements for operating Class 4—Advanced High-Power Rockets.* A person operating one or more Class 4—Advanced High-Power Rockets in controlled airspace must provide the information below for each rocket to the FAA at least 45 days before the proposed operation. The FAA may request additional information if necessary to ensure the proposed operations can be safely conducted. The information shall include:

(1) The information requirements of paragraph (a) of this section.

(2) Maximum possible range,

(3) The dynamic stability characteristics for the entire flight profile,

(4) A description of all major rocket systems, including structural, pneumatic, propellant, propulsion, ignition, electrical, avionics, recovery, wind-weighting, flight control, and tracking,

(5) A description of other support equipment necessary for a safe operation,

(6) The planned flight profile and sequence of events,

(7) All nominal impact areas, including those for any spent motors and other discarded hardware, within three standard deviations of the mean impact point,

(8) Launch commit criteria,

(9) Countdown procedures,

(10) A description of how the applicant will meet § 101.26 (Operating Limitations for Class 4—Advanced High Power Rockets), and

(11) Mishap procedures.

PART 400—BASIS AND SCOPE

13. The authority citation for part 400 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

14. Revise § 400.2 to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 49 U.S.C. Subtitle IX, chapter 701, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to activities of amateur rockets, as defined in 14 CFR 1.1, or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

15. The authority citation for part 401 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

§ 401.5 [Amended]

16. Amend § 401.5 by removing the term *Amateur rocket activities* and its definition.

PART 420—LICENSE TO OPERATE A LAUNCH SITE

17. The authority citation for part 420 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

18. Revise § 420.3 to read as follows:

§ 420.3 Applicability.

This part applies to any person seeking a license to operate a launch site or to a person licensed under this part. A person operating a site that only supports amateur rocket activities as defined in 14 CFR 1.1, does not need a license under this part to operate the site.

Issued in Washington, DC on June 5, 2007.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E7–11263 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144540–06]

RIN 1545–BG03

Built-in Gains and Losses Under Section 382(h)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that apply to corporations that have undergone ownership changes within the meaning of section 382. These regulations provide guidance on the treatment of prepaid income under the built-in gain provisions of section 382(h). The text of the temporary regulations published in this issue of the **Federal Register** serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 12, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144540–06), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144540–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–144540–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Keith Stanley, (202) 622–7750; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, at (202) 622–2949 (TDD Telephone) (not toll free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 382 of the Code. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations only apply in the rare circumstance in which a qualifying loss corporation that uses a particular accounting method undergoes an ownership change. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Nevertheless, the IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. Please see the ''Comments'' section of the temporary regulation on this subject for a description of specific issues on which comments are requested. The IRS and Treasury Department also request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.382–7 is also issued under 26 U.S.C. 382(m). * * *

Par. 2. Section 1.382–7 is added to read as follows:

§ 1.382–7 Built-in gains and losses.

[The text of this proposed section is the same as the text of § 1.382–7T(a) through (b)(1) published elsewhere in this issue of the **Federal Register**].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–11444 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Contract Clauses

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Proposed rule with request for comment.

SUMMARY: The Cost Accounting Standards (CAS) Board is proposing to add a clause for inclusion in CAS-covered contracts and subcontracts awarded to foreign concerns. The Board is taking this action to provide a standard clause for use by Government and contractor personnel in applying the CAS requirements to contracts and subcontracts awarded to foreign concerns.

DATES: Interested parties should submit comments in writing on or before August 13, 2007.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Comments should indicate case number CAS–2007–01N. Electronic comments may be submitted to *casb2@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word, Corel WordPerfect, or as a pdf. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–5105. If you must submit via regular mail, please do so at Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, ATTN: Laura Auletta.

FOR FURTHER INFORMATION CONTACT: Laura Auletta, Manager, Cost Accounting Standards Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202–395–3256).

SUPPLEMENTARY INFORMATION:

A. Background

Prior to November 4, 1993, modified CAS coverage required a contractor to comply with only CAS 401 and CAS 402. Similarly, 9903.201–1(b)(4) required that foreign concerns comply with only CAS 401 and 402. Thus, prior to November 4, 1993, the contract clause at 9903.201–4(c) was used for both contracts with modified coverage and contracts with foreign concerns.

However, on November 4, 1993, the Board revised the definition of modified coverage to include CAS 405 and 406, so that modified coverage currently includes CAS 401, 402, 405, and 406 (see 9903.201–2(b)). In conjunction with the revised definition of modified coverage, the Board also amended the clause at 9903.201–4(c) to include CAS 405 and 406. However, the Board did not change the requirement that foreign concerns comply with only CAS 401 and 402. As a result, the contract clause at 9903.201–4(c) can no longer be used for foreign concerns without modification by the parties.

The Board has developed a clause for use in contracts with foreign concerns that will not require modification. Except that it includes only CAS 401 and 402, this clause is identical to the clause currently applicable to contracts subject to modified coverage. To effect this change, the proposed rule would amend 9903.201–4, Contract Clauses, to include the new clause at (f), Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined this rule is not significant under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this rule will not have a significant impact on a substantial number of small businesses because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this proposed rule. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

List of Subjects in 48 CFR Part 9903

Government procurement, Cost Accounting Standards.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. Section 9903.201–4 is proposed to be amended by adding a new paragraph (f). The proposed paragraph will read as follows:

9903.201–4 Contract Clauses.

* * * * *

(f) *Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.*

(1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in negotiated contracts when the contract is with a foreign concern and the contract is not otherwise exempt under 9903.201–1 (see 9903.201–2(e)).

(2) The clause below requires the contractor to comply with 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently

disclosed and established cost accounting practices.

Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns (DATE)

(a) *The Contractor, in connection with this contract, shall—*

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

[FR Doc. E7–11332 Filed 6–13–07; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 070516106–7106–01; I.D. 041907A]

RIN 0648–AV44

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to decrease the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ) from 300 lb (135 kg) to no more than 150 lb (67 kg) per day or trip, whichever is longer in duration. The intent of this proposed rule is to modify regulations for the Atlantic coast stock of weakfish to be more compatible with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish, as set forth in the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

DATES: Written comments must be received on or before July 16, 2007.

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

- E-Mail: *Weakfish.150@noaa.gov*. Include in the subject line the following identifier: ''Comments on Weakfish Bycatch 150.''
- Federal e-rulemaking portal: *http:/www.regulations.gov*
- Mail: Chris Moore, Chief, Partnerships and Communications Division (SF8), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910. Mark the outside of the envelope: ''Comments on Weakfish Bycatch 150 Proposed Rule.''
- Fax: (301) 713–0596

FOR FURTHER INFORMATION CONTACT: Tom Meyer, 301–713–2334.

SUPPLEMENTARY INFORMATION:

Background

NMFS is proposing to modify weakfish conservation measures in the EEZ under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5103, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission, and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

On February 1, 2007, the Commission's Weakfish Management Board (Board) approved Addendum II to Amendment 4 to the ISFMP for Weakfish. Under the Addendum, the states of Massachusetts through North Carolina will be required to implement a six fish creel limit at their current size limit for the recreational fishery. For the commercial fishery, the Addendum reduces the allowable bycatch limit from 300 pounds to 150 pounds per day or trip. There is currently a bycatch limit of no more than 300 pounds in the EEZ. Addendum II also establishes two management triggers that will require the Board to reconsider the management program if met: (1) when the coastwide commercial landings reach 2.99 million pounds (80 percent of the mean from 2000 2004), and (2) when any state's landings exceed its five year average by more than 25 percent. States are required to fully implement the addendum measures by October 29, 2007. The Board's action was taken in response to a significant decline in stock abundance and increasing total mortality since 1999. As a result of weakfish's depleted stock size, the Board is required under Amendment 4 to adjust the management program to help rebuild spawning stock biomass. This issue is compounded by the fact that natural mortality, rather than fishing mortality, has been indicated as the lead cause for stock decline in the Commission's October 25, 2006, Fishery Management Plan Review for the Weakfish Fishery.

Status of the Weakfish Fishery

The most recent stock assessment (December 2006) was not upheld by an external peer review panel. Therefore, there is uncertainty in the stock status of weakfish. Analyses do indicate that biomass is low and that overfishing is not the cause. The Weakfish Technical Committee, in response to the peer review panel's report, supported five conclusions based on significant evidence that the Board has accepted for management use: (1) The stock is declining; (2) total mortality is increasing; (3) there is not much evidence of overfishing; (4) something other than fishing mortality is causing the decline in the stock; and (5) there is a strong chance that regulating the fishery will not, in itself, reverse stock decline.

Proposed Action

NMFS believes that the proposed decrease of the incidental catch allowance for weakfish is warranted even given the conclusions of the Weakfish Technical Committee. Pursuant to the Atlantic Coastal Act, 16 U.S.C. 5103, the Secretary has a statutory obligation to support the Commission's Interstate Fishery Management Program. The Commission recently adopted Addendum II to Amendment 4, which included a decrease in the commercial bycatch limit. The proposed rule would implement this decrease, consistent with Addendum II, allowing non-directed fisheries using a mesh size less than 3 1/4–inch square stretch mesh or 3 3/4–inch diamond stretch mesh for trawls and 2 7/8–inch stretch mesh for gillnets to possess no more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer in duration; a decrease of 150 lb (67 kg) per day or trip from the current Federal regulation of 300 lb (135 kg) at § 697.7(a)(4)). This action supports the Commission's Interstate Fishery Management Program by being compatible with the effective implementation of the Commission's Weakfish Plan, is consistent with the national standards set forth in section 301 of the Magnuson Stevens Act, and would continue regulatory uniformity in state and Federal waters. This action would also be beneficial insofar as incongruous regulations can confuse stakeholders and complicate management.

Classification

This proposed rule is published under the authority of the Atlantic Coastal Act. Paragraphs (A) and (B) of section 804(b)(1) of the Atlantic Coastal Act, 16 U.S.C. 5103(a)-(b), authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act FMP. Such regulations must be compatible with the effective implementation of a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries has preliminarily determined that this action is compatible with the effective implementation of the Commission's ISFMP for weakfish and consistent with the national standards of the Magnuson-Stevens Act. The Secretary, before making the final determination, will take into account data, views, and comments received during the comment period.

Preliminary review of the proposed action in relation to NOAA Administrative Order (NAO) 216 6, including the criteria used to determine significance, suggests that the proposed action would not have a significant effect, individually or cumulatively on the human environment. Furthermore, NMFS has preliminarily determined that the proposed action is categorically excluded from the requirement to prepare an Environmental Impact Statement or an EA in accordance with 5.05(b) of NAO 216 6, because a prior NEPA document (EA dated August 2003) analyzed the impacts of landing 150 pounds versus 300 pounds of weakfish bycatch. That document found that neither the 150 lb. nor the 300 lb. bycatch limit created a significant impact on the quality of human environment. Although the stock's downward trend is apparent now versus when analyzed in 2003, that trend would not alter the environmental analyses or conclusions rendered in 2003. Specifically, fishing effort (number of tows) and practices (where fished) would remain the same. Nor would the number of weakfish actually caught and killed increase or decrease, because those weakfish that are not retained as incidental catch are discarded as bycatch. The action would, however, continue regulatory uniformity in state and Federal waters, which, as was also the case in 2003, is beneficial insofar as incongruous regulations can confuse stakeholders and complicate management. Accordingly, there would be no significant impact on the physical or human environment resulting from this action and the need to perform further analysis is categorically excluded pursuant to Section 5.05(b) of NAO 216 6.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

NMFS prepared a regulatory flexibility analysis (RFA) that described the economic impacts on small entities for a similar action described in the final rule to increase the permitted non-directed incidental catch of weakfish from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip (68 FR 56789, October 2, 2003). The RFA found that the economic impacts on small entities were not significant and would be at most a positive impact of $1,600 for the entire fishery for the entire year.

This proposed action would return the allowable incidental catch back to 150 lb (67 kg) from the current 300 lb (135 kg) level. NMFS does not have an estimate of the number of small entities to which the proposed action would apply because vessels most likely to be impacted are not required to hold a permit to fish for weakfish in the EEZ. The action would only apply to those fishermen who capture weakfish incidentally (as bycatch) while fishing for other species using a smaller mesh size than is allowed in the directed weakfish fishery. This proposed action would not alter current fishing practices or effort, or increase or decrease the number of weakfish caught because weakfish that are not retained as incidental catch are discarded as bycatch. However, fishermen who catch weakfish incidentally would be able to sell only 150 lb. of weakfish retained per trip rather than 300 lb. The price per pound of weakfish is $0.795 per pound, using the most recent 2005 data. The economic analysis provided in the 2003 rule explains the impact, now a negative impact, that would accrue to the fishermen as a result of the proposed rule. (68 FR 56789, October 2. 2003). Using the updated price per pound of weakfish, that negative impact would be at most $2072 for the whole fishery. NMFS does not consider the economic impact to be significant because the incidental weakfish catch is only a small portion of the entire catch and resulting revenue of these vessels. Using 2005 data, the average annual revenue of those vessels was $243,000, so the impact would be less than 1 percent. Therefore, NMFS has preliminarily determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for E.O. 12866 purposes.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 8, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697, is proposed to beamended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.7, paragraph (a)(4) is revised to read as follows:

§ 697.7 Prohibitions.

(a) * * *

(4) Possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh(as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5cm) diamond stretch mesh for finfish trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets.

* * * * *

[FR Doc. E7–11524 Filed 6–13–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 114

Thursday, June 14, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on June 25 and June 26, 2007.

DATES: Monday, June 25, 2007, from 9 a.m. to 5 p.m., and Tuesday, June 26, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC on Monday, June 25, 2007, from 9 a.m. to 5 p.m., and Tuesday, June 26, 2007, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2007 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2007 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2007 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on June 25 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 19, 2007, to 202–622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: May 22, 2007.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E7–11436 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Enhancing Food Stamp Certification: Food Stamp Modernization Efforts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This notice announces the Food and Nutrition Service's (FNS) intent to request approval from the Office of Management and Budget (OMB) for new information collection. The Food and Nutrition Service plans to systematically examine the range of efforts States are undertaking to enhance food stamp certification and modernize the Food Stamp Program (FSP). This review will consist of a qualitative study relying on the responses of State and local food stamp staff, partners, food stamp applicants and participants, and eligible non-participants and a quantitative study using extant data. Information obtained will inform FNS policy discussions, provide technical and procedurally relevant information to States, and provide a comprehensive and centralized source of information for assessing ways to improve food stamp certification and respond efficiently to the variety of stakeholder queries received.

DATES: Written comments must be received on or before August 13, 2007.

ADDRESSES: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent via U.S. mail to Carol Olander, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1022, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Carol Olander at (703) 305–2576 or via e-mail to *carol.olander@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service, through prior arrangement with Rosemarie Downer, the project officer, during regular business hours (8:30 a.m., to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1022. Rosemarie Downer can be reached at *rosemarie.downer@fns.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Rosemarie Downer at (703) 305–2129.

SUPPLEMENTARY INFORMATION:

Title: Enhancing Food Stamp Certification: Food Stamp Modernization Efforts.

OMB Number: Not Yet Assigned.

Expiration Date: To be determined.

Type of Request: New collection of information.

Abstract: Over the past decade, increased awareness of the importance of the FSP as a basic safety net as well as a critical work support has led to a variety of efforts to expand eligibility, increase program access and reengineer the FSP. At the same time, States are also focusing on ways to increase operational and administrative efficiency and program integrity.

In an effort to document and understand the range of efforts States are employing to enhance the FSP certification process and to modernize FSP administration, FNS plans to develop a comprehensive, national inventory of FSP modernization efforts undertaken in all the States; document key features and outcomes associated with food stamp modernization; systematically describe and compare techniques States are using to modernize the FSP; identify promising practices; and create a single, comprehensive information source on State modernization initiatives. Results of this study will inform FNS policy discussions, provide technical and procedurally relevant information to States, and provide a comprehensive and centralized source of information for assessing ways to improve food stamp certification and responding efficiently to the variety of stakeholder queries received.

Specifically, the study will focus on four types of modernization efforts: policy changes to modernize FSP application, case management, and recertification procedures; reengineering of administrative functions; increased or enhanced use of technology; and partnering arrangements with businesses and nonprofit organizations. The study will examine the impact of these modernization efforts on four types of outcomes: program access, administrative cost, program integrity, and customer services.

To address these objectives, the study will implement a survey of all 50 States (and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) that includes State and local FSP administrators and community organizations and for-profit organizations assisting State modernization efforts. Data will also be obtained through: (1) Descriptive case studies incorporating qualitative data through interviews with local and State-level staff as well as community organizations and for-profit contractors; (2) discussion groups with food stamp participants and eligible non-participants and (3) a limited number of brief in-person exit interviews with food stamp applicants and participants. The study will rely on extant data to describe FSP performance before and after the implementation of State modernization efforts with respect to application approval rates, participation rates, payment accuracy, administrative costs and other outcomes.

Survey, interview and focus group questions will be kept as simple and respondent-friendly as possible. Responses to all questions will be voluntary. The Food and Nutrition Service will take the following steps to treat the data provided in a confidential manner: (1) No data will be released in a form that identifies individual respondents by name and (2) information collected through interviews will be combined across other respondents in the same category and reported in aggregate form. Respondents will be notified of the confidentiality measures during data collection.

Affected Public: Staff involved in or knowledgeable about modernization efforts at the State level, including FSP directors, policy and operations staff, Management Information System (MIS) and data reporting staff and call center staff; staff from local food stamp offices; State and local staff from community organizations and for-profit contractors assisting with food stamp modernization efforts; and food stamp applicants, participants, and eligible non-participants.

Estimated Number of Respondents: 804. This number represents the sum of State-level FSP staff involved in food stamp modernization efforts, community organization staff or for-profit contractor staff involved in food stamp modernization efforts, food stamp applicants and participants, and eligible non-participants.

Estimated Number of Responses per Respondent: 1. For the State-level respondents, 14 will be respondents twice (once to a survey and once to an in-person interview) and the rest will respond once. For the local-level respondents, 28 respondents will be respondents twice and the rest will respond once.

Estimated Annual Responses: 804.

Estimated Hours per Response: 1.75. All burden estimates include respondents' time to prepare for and complete surveys, administrative interviews, focus groups, or exit interviews with FSP applicants and participants. Surveys: 2 hours each for State and local level FSP interviews and 1 hour each for community representative or for-profit contractors; in-person administrative interviews: 1 hour each; focus groups: 1.5 hours per participant; exit interviews with FSP applicants and participants: 10 minutes each.

Estimated Total Annual Burden: 1404 hours.

Dated: June 7, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–11482 Filed 6–13–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council on Maternal, Infant and Fetal Nutrition.

DATES: July 25–27, 2007, 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Hilton Springfield, 6550 Loisdale Road, Springfield, Virginia 22150.

FOR FURTHER INFORMATION CONTACT: Anne Bartholomew, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2086.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children, and the Commodity Supplemental Food Program. The agenda items will include a discussion of general program issues. Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements before or after the meeting with Anne Bartholomew, Supplemental Food Programs Division, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302. If members of the public need special accommodations, please notify Ms. Anita Cunningham by June 18, 2007, at (703) 305–0986, or by e-mail at *anita.cunningham@fns.usda.gov*.

Dated: May 31, 2007.

Roberto Salazar,

Administrator.

[FR Doc. E7–11485 Filed 6–13–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, CA, Creeks Forest Health Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent.

SUMMARY: This notice cancels the Notice of Intent to prepare a Supplement to the Environmental Impact Statement for the Creeks Forest Health Recovery Project on the Lassen National Forest, published in the **Federal Register** on December 7, 2006, (Volume 71, Number 235, page 70946).

ADDRESSES: Almanor District Ranger, Lassen National Forest, P.O. Box 767, Chester, CA 96020.

FOR FURTHER INFORMATION CONTACT: Rick Atwell, Interdisciplinary Team Leader, may be contacted by phone at (530) 258–2141.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a Supplement to the Environmental Impact Statement for the Creeks Forest Health Recovery Project is cancelled due to additional information related to the California spotted owl analysis, conducted in concert with Pacific Southwest Research Station, for the Creeks project area.

Dated: June 8, 2007.

Elizabeth Norton,

Acting Forest Supervisor.

[FR Doc. 07–2935 Filed 6–13–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) and Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Thursday, June 28, 2007 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: June 28, 2007

ADDRESSES: Forest Supervisor's Office, 1101 US Hwy 2 West, Libby, Montana

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include: funding for fiscal year 2008, review of approved project proposals, election of chair and co-chair, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: June 8, 2007.

Paul Bradford,

Forest Supervisor.

[FR Doc. 07–2936 Filed 6–13–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–877)

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision: Lawn and Garden Steel Fence Posts from the People's Republic of China

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

EFFECTIVE DATE: June 14, 2007.

SUMMARY: On September 22, 2005, the United States Court of International Trade (''CIT'') sustained the *Final Results of Redetermination Pursuant to Remand, Hebei Metals & Minerals Imp. & Exp. Corp. And Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States* (July 20, 2005) (''*Second Remand Redetermination*'') made by the Department of Commerce (''the Department'') pursuant to the CIT's second remand of the final determination of the less–than-fair–value investigation of lawn and garden steel fence posts from the People's Republic of China (''PRC''). *See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Consol. Ct. No. 03–00442, Slip Op. 05–126, (CIT September 22, 2005) (''*Court Decision in Hebei Metals*''). As there is now a final and conclusive court decision in this case, the Department is amending the final determination and antidumping duty order of this investigation.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2003, the Department published in the **Federal Register** its final determination in the above–referenced investigation covering the period October 1, 2001, through March 31, 2002. *See Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China*, 68 FR 20373 (April 25, 2003) (''*Final Determination*''). Following publication of the *Final Determination*, Hebei Metals & Minerals Import & Export

Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. (collectively, ''Hebei Metals'') filed a lawsuit with the CIT challenging the Department's Final Determination. Hebei Metals challenged the surrogate coal value, the surrogate steel–pallet value, and the exclusion of certain items in the calculation of the surrogate financial ratios. On September 11, 2003, the CIT issued on behalf of Hebei Metals, an injunction enjoining the Department from issuing instructions to liquidate entries of lawn and garden steel fence posts from the PRC. *See Hebei Metals & Minerals Import & Export Corporation, et. al. v. United States*, Court No. 03–00442 (September 11, 2003).

On July 19, 2004, the CIT first remanded this case to the Department to address three aspects of the Department's antidumping duties calculation in the *Final Determination*: (1) the use of an Indian import price, based on Indian Import Statistics, rather than an Indian domestic price, based on Tata Energy Research Institute's Energy Data Directory & Yearbook (''Teri Data'') for the surrogate value for coal, (2) the inclusion of a Swedish import value in the surrogate value for steel–pallet packing material, and (3) exclusion of internal consumption from raw material expenditures in the calculation of surrogate ratios for selling, general, and administrative (''SG&A'') expenses and profit. *See Hebei Metals &Minerals Import & Export Corporation, et al. v. United States*, Slip Op. 04–88 (CIT July 19, 2004) (''First Remand'').

On October 20, 2004, the Department issued the *Final Results of Redetermination Pursuant to Remand, Hebei Metals & Minerals Imp. & Exp. Corp. And Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States* (October 20, 2004) (''*First Remand Redetermination*'') in the above–referenced investigation pursuant to the CIT's remand order on July 19, 2004. In its redetermination the Department (1) concluded that substantial evidence indicated that the use of the Indian import prices for the surrogate value of coal yielded a more accurate surrogate value than the domestic coal value on the record; (2) pursuant to the Court's instructions, excluded the Swedish import value from the calculation of the surrogate value for steel pallets; and (3) concluded that substantial record evidence demonstrated the significance of internal consumption, and its removal from the denominator increased the accuracy of the ratios.

On March 10, 2005, the CIT issued a second remand. *See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, Slip Op. 05–32 (CIT March 10, 2005) (''*Second Remand*''). In the Second Remand, the CIT determined that (1) the Department's selection of a surrogate coal value was arbitrary and unsupported by substantial evidence and, therefore, remanded this issue to the Department for reconsideration; (2) the Department had adequately complied with the CIT's instructions to exclude a Swedish import value from the calculation of the surrogate value for steel pallets and, therefore, the issue was no longer before the Court; and (3) the Department provided a reasonable explanation as to why it is not appropriate to remove any amounts from the numerators of the SG&A and factory overhead surrogate financial ratios and, therefore, sustained the Department's determination. *Id*.

On July 20, 2005, the Department issued its *Second Remand Redetermination*. In its second redetermination, the Department determined that the Teri Data, placed on the record by Hebei Metals, was the best source of data for the selection of a surrogate value for coal in this proceeding because it was complete and comprehensive in that it covers all sales of all types of coal made by Coal India Limited and its subsidiaries and because it was exclusive of duties and taxes. On September 22, 2005, the CIT sustained the Department's *Second Remand Redetermination*. See *Court Decision in Hebei Metals*, Slip Op. 05–126. The CIT's final judgment was not in harmony with the Department's *Final Determination*. No party appealed the CIT's decision. As there is now a final and conclusive court decision in this case, we are amending our *Final Determination*.

Amended Final Determination

As the litigation in this case has concluded, the Department is amending the *Final Determination*. The revised dumping margin in the amended final determination is as follows:

Exporter	Margin
Hebei Metals & Minerals Import & Export Corporation	6.49 percent

The PRC–wide rate continues to be 15.61 percent as determined in the Department's *Final Determination*. Within five business days of publication of this notice, the Department will issue instructions to U.S. Customs and Border Protection (''CBP'') to revise the cash deposit rates for the company listed above, effective as of the publication date of this notice. Because Hebei Metals received a preliminary injunction, we will also instruct CBP to liquidate all entries, for which no review was requested, at the new cash deposit rate.

This notice is published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended.

Dated: June 8, 2007.

David M. Spooner,

Assistant Secretary for Import Administration

[FR Doc. E7–11522 Filed 6–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA69

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in July, August, and September of 2007. Fishermen and shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held throughout 2007.

DATES: The Atlantic Shark Identification Workshop will be held July 12, August 9, and September 6, 2007.

The Protected Species Safe Handling, Release, and Identification Workshop will be held July 3, 10, 17, 25, August 1, 16, 30, and September 5, 11, 19, 2007. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshop will be held in

Vero Beach, FL; Westwego, LA; and, Greenville, NC.

The Protected Species Safe Handling, Release, and Identification Workshop will be held in North Charleston, SC; Panama City, FL; Daytona Beach, FL; Tampa, FL; Dedham, MA; Portsmouth, VA; Kenner, LA; Ronkonkoma, NY; Port Saint Lucie, FL; and, Manahawkin, NJ. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: http://www.nmfs.noaa.gov/sfa/hms/workshops/.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION:

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to a Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless valid Atlantic Shark Identification Workshop certificates for each business location have been submitted with the permit renewal application.

Workshop Dates, Times, And Locations

1. July 12, 2007, from 9 a.m. – 3 p.m. Leisure Square – TUFF Room; Vero Beach Recreation Dept.*, 3705 16th Street, Vero Beach, FL 32960. *This activity is not sponsored by the City of Vero Beach.
2. August 9, 2007, from 9:30 a.m. – 3 p.m. Jefferson Parish Public Library – Westwego Branch, 635 4th Street, Westwego, LA 70094.
3. September 6, 2007, from 9 a.m. – 3 p.m. Walter L. Stasavich Science and Nature Center, 1000 Mumford Road, Greenville, NC 27858.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species–specific dealer–reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshop

Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners whose permits expire in mid–2007 must attend one of the free workshops offered in July, August, or September 2007. New shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend the Protected Species Safe Handling, Release, and Identification workshops. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times.

Workshop Dates, Times, And Locations

1. July 3, 2007, from 9 a.m. – 5 p.m. Holiday Inn, 5264 International BLVD., North Charleston, SC 29407.
2. July 10, 2007, from 9 a.m. – 5 p.m. Holiday Inn Select, 2001 Martin Luther King Jr. BLVD., Panama City, FL 32405.
3. July 17, 2007, from 9 a.m. – 5 p.m. Hilton Garden Inn, 189 Midway Avenue, Daytona Beach, FL 32114.
4. July 25, 2007, from 9 a.m. – 5 p.m. Hilton Garden Inn, 10309 Highland Manor Drive, Tampa, FL 33610.
5. August 1, 2007, from 9 a.m. – 5 p.m. Holiday Inn, 55 Ariadne Road, Dedham, MA 02026.
6. August 16, 2007, from 9 a.m. – 5 p.m. Hawthorn Hotel and Suites, 506 Dinwiddie Street, Portsmouth, VA 23704.
7. August 30, 2007, from 9 a.m. – 5 p.m. Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.
8. September 5, 2007, from 9 a.m. – 5 p.m. Hilton Garden Inn, 3485 Veterans Memorial Highway, Ronkonkoma, NY 11779.
9. September 11, 2007, from 9 a.m. – 5 p.m. Holiday Inn, 10120 S. Federal Highway, Port Saint Lucie, FL 34952.
10. September 19, 2007, from 9 a.m. – 5 p.m. Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Aquatic Release Conservation ((877) 411–4272), 1870 Mason Ave., Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co–owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry–sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid NOAA workshop certificate may result in a permit denial.Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 7, 2007.

James P. Burgess,

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

[FR Doc. E7–11523 Filed 6–13–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Weeks Bay National Estuarine Research Reserve Revised Management Plan Including a Boundary Expansion

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Approval and Availability of the Final Revised Management Plan for the Weeks Bay National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the revised management plan, which includes an expansion of the boundary of the reserve, for the Weeks Bay National Estuarine Research Reserve.

The Weeks Bay Reserve was designated in February 1986 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1998. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

The mission of the Weeks Bay Reserve is to provide leadership to promote informed management of estuarine and coastal habitats through scientific understanding and encourage good stewardship practices through partnerships, public education, and outreach programs. The management plan establishes three goals consistent with the reserve's mission. These goals are (1) protect and improve habitat and biological diversity within the boundary of the Reserve, (2) improve decisions affecting estuarine and coastal resources, and (3) promote education, stewardship, and scientific research focusing on estuarine ecosystems. Organized in a framework of programmatic goals and objectives, the Weeks Bay Reserve's management plan identifies specific strategies or actions for research, education/interpretation, public access, construction, acquisition, and resource protection, restoration, and manipulation. Overall, the plan seeks to accomplish the mission of the reserve by facilitating scientific research, encouraging stewardship, and addressing the local education and outreach needs.

Specifically, stewardship is encompassed under resource protection, habitat restoration, and resource manipulation plans. These plans address reserve efforts to evaluate natural and anthropogenic processes that affect the reserve and its habitats, support for research and monitoring of important resources, restore and protect natural habitats and to actively educate the public to inform resource management.

Research and monitoring support independent research projects within the reserve and its vicinity with resources and background data. Staff and visiting researchers conduct monitoring and research within the boundaries of the reserve and Weeks Bay watershed and use GIS to map critical habitats. Research and monitoring results are made available to others and is translated to public and private users through education, training and outreach programs.

Education at the reserve targets a wide variety of audiences including students, teachers, adults, resource users and coastal decision-maker audiences. The reserve's comprehensive approach to education including a K–12 education program, outreach and a coastal training program are designed to increase knowledge of the target audiences about Alabama estuaries.

Public access at Weeks Bay Reserve includes improving and enhancing water access to facilitate the implementation of reserve programs. Also, the reserve will reduce impacts on natural resources and maximize public outreach by designating specific areas (i.e., boardwalks) and create guidelines for public access.

Administration at the reserve includes supporting the staffing and budget necessary to carry out the goals and objectives of the plan. The administration of the Weeks Bay Reserve is a collective effort involving the Alabama Department of Conservation and Natural Resources (ADCNR), other state or local agencies and organizations, and the Reserve Advisory Committee. An established administrative framework implements and coordinates Reserve programs under the plan.

The boundary expansion incorporates adjacent state-owned coastal and submerged lands within the Weeks Bay Coastal Area. Incorporating these lands increases the size of the reserve from 6,192 acres to 6,525 acres. The expansion provides a broader and more representative diversity of wetland and water habitats found within the old boundary of the reserve. Habitats within the new boundary of the reserve include tidal freshwater riverine, emergent and forested wetland communities.

FOR FURTHER INFORMATION CONTACT: Matthew J. Chasse at (301) 563–1198 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: June 6, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E7–11443 Filed 6–13–07; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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: Interested persons are invited to submit comments on or before August 13, 2007.

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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: Final Performance Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 120.

Abstract: The purpose of the JKJ Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. Awards are made to institutions of higher education, who disburse funds to fellows. This Final Performance Report will be used by these institutions to report information on the fellowships administered during the four-year project period. Program staff have revised the Final Performance Report based on an analysis of respondent comments and an evaluation of the data provided by the report. Program staff believe that the revised report will improve the clarity of the document, reduce burden on respondents, and more effectively collect the data necessary to evaluate the projects' performance and address updated GPRA requirements.

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 3367. 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. E7–11500 Filed 6–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–175]

CenterPoint Energy Gas Transmission Company ; Notice of Negotiated Rate Filing

June 4, 2007.

Take notice that on May 30, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amendment to a negotiated rate agreement between CEGT and Anadarko Energy Services Company. The amended agreement will be effective June 1, 2007.

Any person desiring to intervene or protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' line and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11453 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–388–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 4, 2007.

Take notice that on May 21, 2007, and supplemented on June 1, 2007, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, Charleston, West Virginia 25314, filed in Docket No. CP07–388–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to increase the maximum allowable operating pressure (MAOP) of three of its existing transmission pipelines, located in Guernsey County, Ohio, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Columbia proposes to increase the MAOP on its Lines O–1582, consisting of 2.1 miles of 2- and 6-inch diameter pipeline, O–1441, consisting of 0.43 mile of 4- and 6-inch diameter pipeline, and a portion of O–323, consisting of 2.03 miles of 3-, 4-, and 8-inch diameter pipeline, from the current MAOP of 50 psig to a new MAOP of 99 psig and to operate the subject pipelines at the higher pressure. Columbia states that the proposed uprate creates a capacity of 0.9 MMcf/d. Columbia asserts that the increase of the MAOP will allow Columbia to maintain current firm contractual obligations, as well as improve the efficient use of these facilities by increasing their capacity potential via the higher operating pressures. Columbia does not propose any pipeline construction or replacement as a result of the proposed uprate.

Any questions regarding the application should be directed to Victoria J. Hamilton, Certificate Lead, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, or call at (304) 357–2297.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11458 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–468–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

June 4, 2007.

Take notice that on May 31, 2007, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original volume No. 1, the following tariff sheets, with an effective date of July 1, 2007:

Eighth Revised Sheet No. 33.
Eighth Revised Sheet No. 44.
Eighth Revised Sheet No. 53.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–11450 Filed 6–13–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–466–000]

Dominion South Pipeline Company, LP; Notice of Report of Overrun Charge/Penalty Revenue Distribution

June 4, 2007.

Take notice that on May 31, 2007, Dominion South Pipeline Company, LP (Dominion South) filed its annual report of overrun charge/penalty revenue distributions.

Dominion South states that copies of the transmittal letter and summary workpaper are being mailed to Dominion South's customer and to all interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time June 8, 2007.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–11459 Filed 6–13–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–390–000; CP07–391–000; CP07–392–000]

Enstor Houston Hub Storage and Transportation, LP; Notice of Application Filing

June 7, 2007.

Take notice that on May 24, 2007, Enstor Houston Hub Storage and Transportation, LP (Houston Hub), 20333 State Highway 249, Suite 400, Houston, Texas 77070, filed an application in Docket Nos. CP07–390–000, CP07–391–000, and CP07–392–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Houston Hub to construct, own, operate, and maintain a new underground natural gas storage facility in Liberty County, Texas. Houston Hub also requests a blanket certificate pursuant to Subpart G of 18 CFR part 284 and a blanket certificate pursuant to Subpart F of 18 CFR part 157. Lastly, Houston Hub seeks authority to provide the proposed storage and storage-related services at market based rates. This filing is available for review at the Commission in the Public Reference Room or may 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Joseph H. Fagan, Heller Ehrman LLP, 1717 Rhode Island Ave., NW., Washington, DC 20036–3001 at (202) 912–2162 or by fax at (202) 912–2020.

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 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: June 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11464 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–751–000]

Lea Power Partners, LLC; Notice of Issuance of Order

June 7, 2007.

Lea Power Partners, LLC (Lea Power) 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, the reassignment of transmission capacity, and the resale of firm transmissions rights. Lea Power also requested waivers of various Commission regulations. In particular, Lea Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Lea Power.

On June 5, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). 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 concerning the blanket approvals of issuances of securities or assumptions of liability by Lea Power should file a 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 protests is July 6, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Lea Power 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 Lea Power, 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 Lea Power'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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11465 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–467–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 4, 2007.

Take notice that on May 31, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2007:

Twelfth Revised Sheet No. 414.
Second Revised Sheet No. 414A.02.
First Revised Sheet No. 414A.03.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11449 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–135]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

June 4, 2007.

Take notice that on May 31, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2007, and the related Transportation Rate Schedule FTS Agreement with a Negotiated Rate Exhibit.

Second Revised Sheet No. 26P.
Fifth Revised Sheet No. 26P.01.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11455 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–471–000]

NGO Transmission, Inc.; Notice of Tariff Filing

June 4, 2007.

Take notice that on May 31, 2007, NGO Transmission, Inc. (NGO) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4 and First Revised Sheet No. 26, to become effective June 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11452 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–393–000]

Nornew Energy Supply, Inc.; Notice of Application

June 4, 2007.

Take notice that on May 25, 2007, Nornew Energy Supply, Inc. (Nornew), 2500 Tanglewilde, Suite 250, Houston, Texas 77063, filed in Docket No. CP07–393–000 an abbreviated application pursuant to sections 1(c) and 7(b) of the Natural Gas Act (NGA), as amended, and sections 152 and 157 of the Commission's regulations, for an order declaring that Nornew may abandon its jurisdictional transportation services and that the company and its facilities and services will be exempt from Commission regulation.

Copies of this filing are available for review at the Commission's Washington, DC offices or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *ferconlinesupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to Randall S. Rich, Bracewell & Giuliani LLP, 2000 K Street, NW., Suite 500, Washington, DC 20006; or phone (202)

828–5879; FAX (202) 857–2125; or e-mail *randy.rich@bgllp.com.*

There are two ways to become involved in the Commission's review of this application. First, any person wishing to obtain legal status by becoming a party to this proceeding should 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) by the comment date, below. 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 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 proposal. 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 proposal provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for New York to appear or be represented at the hearing.

Comment Date: 5 p.m. Eastern Time on June 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11448 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–066]

Northern Natural Gas Company; Notice of Negotiated Rate Filing

June 4, 2007.

Take notice that on May 31, 2007, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on June 1, 2007:

42 Revised Sheet No. 66A
First Revised Sheet No. 66B.02

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11456 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4719–001]

Skolds, John L.; Notice of Filing

June 7, 2007.

Take notice that on May 25, 2007, John L. filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825(b) (2000) and part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR part 45 (2006).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 25, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11461 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–164]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Amendment Filing

June 4, 2007.

Take notice that on May 30, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a negotiated rate amendment between Tennessee and Eastman Chemical Company (Eastman). Tennessee requests that the negotiated rate amendment between Tennessee and Eastman become effective on July 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11454 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–470–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 2007.

Take notice that on May 31, 2007, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 87I, to become effective July 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11451 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–49–000]

California for Renewable Energy, Inc. (CARE), Complainant v. California Public Utilities Commission (CPUC), California Department of Water Resources (CDWR), Pacific Gas and Electric Company (PG&E), The City and County of San Francisco (CCSF), Respondents; Second Amended Complaint Notice

June 4, 2007.

Take notice that on June 1, 2007, Californians for Renewable Energy, Inc. (CARE) tendered for filing a second amendment to its complaint against the California Public Utilities Commission (CPUC), California Department of Water Resources (CDWR), Pacific Gas and Electric Company (PG&E), and the City and County of San Francisco (CCSF). CARE states that it filed a formal complaint against the respondents on December 15, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11457 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277]

AmerenUE; Notice of Availability of Draft Environmental Assessment

June 7, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380), the Office of Energy Projects staff (staff) reviewed AmerenUE's request to rebuild the upper reservoir of the Taum Sauk Pumped Storage Project (FERC No. 2277), located on the East Fork Black River, in Reynolds County, Missouri, and prepared a Draft Environmental Assessment (DEA) for the construction project. In this DEA, staff analyzes the potential environmental effects of the Proposed Action and concludes that the proposal, with recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library link. Enter the docket number (P–2277) in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Any comments should be filed by, July 9, 2007, and should be addressed to Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference the Taum Sauk Project No. 2277, on all comments. For further information on this notice, please contact Thomas LoVullo at (202) 502–8900.

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 at *http://www.ferc.gov under* the e-Filing link. The Commission strongly encourages electronic filing.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11460 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12677–002]

Lake Shannon Hydroelectric Company, LLC; Notice of Surrender of Preliminary Permit

June 7, 2007.

Take notice that Lake Shannon Hydroelectric Company, LLC, permittee for the proposed Scoggins Dam Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on October 3, 2006, and would have expired on September 30, 2009.[1] The project would have been located on Scoggins Creek in Washington County, Oregon.

The permittee filed the request on May 21, 2007, and the preliminary permit for Project No. 12677 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11462 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

[1] 117 FERC ¶ 62,001.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12659–002]

Richard V. Williamson: Notice of Surrender of Preliminary Permit

June 7, 2007.

Take notice that Richard V. Williamson, permittee for the proposed Stony Creek Water Power Project, has requested that its preliminary permit be terminated. The permit was issued on October 25, 2006, and would have expired on September 30, 2009.[1] The project would have been located on Stony Creek in Colusa County, California.

The permittee filed the request on May 23, 2007, and the preliminary permit for Project No. 12659 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11463 Filed 6–13–07; 8:45 am]

BILLING CODE 6717–01–P

[1] 117 FERC ¶ 62,068.

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2007–0466; FRL–8327–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Review Framework; EPA ICR Number 2185.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed amendment to an existing Information Collection Request (ICR), number 2185.01, which is set to expire on November 30, 2008, to the Office of Management and Budget (OMB). This is a request for a new collection. 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 August 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–OECA–2007–0466 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA Docket Center, Environmental Protection Agency, OECA Docket, mail code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* The EPA Docket Center in the District of Columbia is located at EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1752, and the telephone number for the OECA Docket is (202) 566–1514.

Instructions: Direct your comments to Docket ID No. OECA–2007–0466. 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.

FOR FURTHER INFORMATION CONTACT:

Arthur Horowitz at (202) 564–2612.

SUPPLEMENTARY INFORMATION: The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an 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.*

Affected entities: EPA Regional Offices, State governments, and local governments

Title: State Review Framework

Abstract: The State Review Framework (''Framework'') is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. The Framework is described in the April 26, 2005 **Federal Register** Notice (79 FR 21408). This amendment will allow OECA to collect information to assist in the evaluation of the State Review Framework implementation from FY 2005 to the end of FY 2007. This request will allow EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

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 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

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

(iii) 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.

Burden Statement: The estimated burden for this Framework is 6 hours per respondent. The total number of respondents is 236, producing an approximate total burden of 1375 hours. For each respondent, the proposed frequency of response is one-time in a three-year cycle. The projected cost burden to respondents is $47,213, which includes a total capital and start-up component of $0.0, annualized over its expected useful life, and a total operation and maintenance component of $0.0. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 6, 2007.

Lisa Lund,

Acting Office Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. E7–11514 Filed 6–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8327–4; Docket ID No. EPA–HQ–ORD–2007–0351]

Draft Toxicological Review of Bromobenzene: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop and public comment period.

SUMMARY: EPA is announcing that the Oak Ridge Institute of Science and Education (ORISE), under an Interagency agreement between the Department of Energy and EPA, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of Bromobenzene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (NCEA–C–1497). The EPA also is announcing a public comment period for the draft document. EPA intends to consider comments and recommendations from the public and the expert panel meeting when EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with this notice to ORISE for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

ORISE invites the public to register to attend this workshop as observers. In addition, ORISE invites the public to give brief oral comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* When finalizing the draft document, EPA intends to consider ORISE's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives in accordance with this notice.

DATES: The peer-review panel workshop will begin on August 29, 2007, at 9 a.m. and end at 3 p.m. The public comment period begins June 15, 2007, and ends August 14, 2007. Technical comments should be in writing and must be received by EPA by August 14, 2007. EPA intends to submit comments from the public received by this date to ORISE prior to the workshop for consideration by the panel.

ADDRESSES: The peer-review workshop will be held at the American Geophysical Union, 2000 Florida Avenue NW., Washington, DC 20009. ORISE is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by August 15, 2007, via the Internet at *http://www.orau.gov/bromobenzene.* You may also register by calling ORISE at 865–576–2922, sending a facsimile to 865–241–3168, or sending an e-mail to Margaret Lyday, *lydaym@orau.gov.* You must register by August 15, 2007, if you wish to provide brief oral comments at the workshop.

The draft Toxicological Review of Bromobenzene: In Support of Summary Information on the Integrated Risk Information System (IRIS) is available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from ORISE. The National Toxicology Program studies referenced in the Toxicological Review of Bromobenzene are available by calling EPA's IRIS Hotline at (202) 566–1676, by fax at (202) 566–1749 or by e-mail at *iris@epa.gov.*

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the peer review workshop, contact Margaret Lyday, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, 865–576–2922 or 865–241–3168 (facsimile), *lydaym@orau.gov* (e-mail).

For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

If you have questions about the document, contact Martin Gehlhaus, IRIS Staff, National Center for Environmental Assessment, (8601D), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–1596; facsimile: 202–565–0075; *gehlhaus.martin@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for oral comments from the public. Please let ORISE know if you wish to make comments during the workshop prior to the meeting by registering on the web site at *http://www.orau.gov/bromobenzene* and indicating your intent to make oral comments. Space is limited, and reservations will be accepted on a first-come, first-served basis.

III. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0351 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by email or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0351. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 8, 2007.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–11518 Filed 6–13–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John Luther King, Jr., Dallas; Teresa Ann King, Dallas; LKCM Investment Partnership, L.P., Ft. Worth; New Summit Partners, L.P., Ft. Worth, all of Texas; LKCM Private Discipline Master Fund, SPC, Grand Cayman, Cayman Islands; and J. Bryan King, and Mason D. King, both of Ft. Worth, Texas; together, acting in concert, to acquire additional voting shares of MS Financial, Inc., and thereby indirectly acquire voting shares of Main Street Bank, both of Kingwood, Texas.

Board of Governors of the Federal Reserve System, June 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11503 Filed 6–13–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, through its wholly–owned subsidiary FifthThird Financial Corp, both of Cincinnati, Ohio, to acquire 100 percent of the voting shares of R–G Crown Bank, FSB, Casselberry, Florida, and thereby engage in owning and operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11502 Filed 6–13–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 9th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: June 22, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: Over the next several months, the Quality Workgroup will begin to gather information from a wide variety of stakeholders on the data infrastructure strategies—data aggregation including merging of data from multiple sources and measuring across episodes of care—that have been developed and implemented across the healthcare community.

The following questions are designed to draw out responses from industry members, regardless of size or implementation status, on real-time experiences with creating and/or implementing a data infrastructure strategy for quality measurement and reporting. The responses will be analyzed and summarized to help Quality Workgroup members understand the current challenges, successes, and best practices within the industry.

Questions

1. Please describe the process through which data is typically collected and aggregated, providing real-time examples and drawing from your experiences where possible. Please include the following key points:

- What business functions (e.g., transparency, payment, network creation, internal quality improvement, public reporting, disease management) are supported through aggregation of patient-level data?
- What financial models support the operational costs of aggregating patient-level data (e.g., internal costs, payers or employers paying a set fee, sale of data to third parties, grants, etc.)?
- In your experience, what types of data can be collected and merged together? For instance, can electronic health record data be merged with other data (claims, lab results, pharmacy)? What are the common barriers to merging data from multiple sources?
- What strategies can be used to help ensure that data that is generated by or stored in multiple systems within an organization can be collected and aggregated?
- What strategies could be employed to ensure that data can be aggregated from multiple organizations? What types of agreements and system changes are needed for this to occur?
- In your experience, when a single data element is accepted from multiple and distinct sources (e.g., claims data, electronic health records, lab results), from which sources is duplicate data typically accepted? What processes are needed to ensure that the data are comparable?
- What data would you like to collect but do not currently have access to or the ability to collect?
- Of the data that you can currently access, what data cannot be reasonably aggregated at a patient level with data from other systems due to technical, business or policy challenges: Please describe the challenges.
- What are some best practices or lessons learned that could be shared about collecting and aggregating data from multiple sources?
- Is your experience, is a centralized or distributed database (i.e., one with multiple storage sites) preferable? What are the pros and cons of using either approach?
- What factors should be considered when determining what type of entity should serve as the database host? Can you provide examples of the database host arrangements with which you have experience?
- What types of organizations need access to data form an aggregated database? Can you describe the types of data-sharing agreements that are needed to share data from an aggregated database?
- What privacy/security challenges are common when considering the collection and aggregation of data from multiple sources as well as the sharing of that data? What strategies can be used to overcome these challenges?

2. Can you please input on the strategies that should be used to develop a longitudinal view of patient data to evaluate clinical performance, providing real-time examples and drawing from your experiences where possible? Please focus on the following key points:

- What strategies can be used to link patient-level data to define an episode of care (e.g., commercial software vs. custom algorithms)?
- For what medical conditions is longitudinal measurement the most useful? Why?
- What data sources are needed (e.g. pharmacy, lab results, claims data, electronic health records, data from multiple organizations) to collect longitudinal data for episodic measurement? Can you describe initiatives where this has been done successfully?
- In your experience, how is an episode-of-care quality (and cost) measurement strategy influenced by data availability? Data reliability?
- What factors should be considered when determining what type of entity should serve as the database host for longitudinal data? Can you provide examples of hosting arrangements with which you have experience?
- What implementation barriers exist related to data collection and aggregation of longitudinal data? What strategies can be employed to overcome them?
- What outcome and process measures are best supported by an episode-of-care methodology? Can you provide specific examples using a methodology with which you are familiar?
- What feedback mechanisms are used or should be used to provide information back to providers or payers to help them better manage patient care? Are these methods retrospective, concurrent, or prospective? What are the barriers to providing concurrent or prospective feedback?
- What are some best practices or lessons learned that could be shared on longitudinal data management strategies?

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/quality_instruct.html.*

Persons wishing to submit written testimony, please contact Michelle Murray via e-mail at *michelle.murray@hhs.gov.*

Dated: June 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–2938 Filed 6–13–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0219]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the animal drug user fees, fee waivers and reductions.

DATES: Submit written or electronic comments on the collection of information by August 13, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

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: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ‘‘Collection of information’’ is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fees and Fee Waivers and Reductions (OMB Control Number 0910–0540)—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA) (Public Law 108–130), amended the Federal Food, Drug, and Cosmetic Act and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from, or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled ‘‘Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions.’’ This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA’s animal drug user fees. Further, this guidance also describes the types of fees and fee waivers and reductions; what information FDA recommends be submitted in support of a request for a fee waiver or reduction; how to submit such a request; and FDA’s process for reviewing requests. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed-- application fees, product fees, establishment fees, or sponsor fees.

Respondents to this collection of information are new animal drug sponsors.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(d)(1)(A) Significant barrier to innovation	5	1 time for each application	5	2	10
740(d)(1)(B) Fees exceed cost	1	1 time for each application	1	2	2
740(d)(1)(C) Free choice feeds	5	1 time for each application	5	2	10
740(d)(1)(D) Minor use or minor species	10	1 time for each application	10	2	20
740(d)(1)(E) Small business	2	1 time for each application	2	2	4

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Request for reconsideration of a decision	5	1 time for each application	5	2	10
Request for review—(user fee appeal officer)	2	1 time for each application	2	2	4
Total					60

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submission types received by FDA in fiscal year 2003. FDA's Center for Veterinary Medicine estimates 30 waiver requests that include the following: 5 significant barriers to innovation, 1 fee exceed cost, 5 free choice feeds, 10 minor use or minor species, 2 small business waiver requests, 5 requests for reconsideration of a decision, and 2 requests for user fee appeal officer. The estimated hours per response are based on past FDA experience with the various waiver requests in FDA's Center for Drug Evaluation and Research. The hours per response are based on the average of these estimates.

Dated: June 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11425 Filed 6–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0221]

Otsuka Pharmaceutical Co., Ltd.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for RAXAR (grepafloxacin hydrochloride (HCl)) Tablets held by Otsuka Pharmaceutical Co., Ltd. (Otsuka), c/o Otsuka Pharmaceutical Development & Commercialization, Inc., 2440 Research Blvd., Rockville, MD 20850. Otsuka has voluntarily requested that approval of this application be withdrawn because the product is no longer marketed, thereby waiving its opportunity for a hearing.

DATES: Effective June 14, 2007.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a letter dated March 5, 2003, Otsuka requested that FDA withdraw approval of NDA 20–695 for RAXAR (grepafloxacin HC1) Tablets, stating that the product was no longer being marketed. In FDA's acknowledgment letter of June 20, 2003, the agency informed Otsuka that RAXAR (grepafloxacin HCl) Tablets, indicated for the treatment of a variety of infections, had been removed from the market because of safety concerns; in its follow-up letter of January 12, 2007, the agency also informed Otsuka that it had determined that the RAXAR NDA should be withdrawn under § 314.150(d) (21 CFR 314.150(d)) because of its effect on cardiac repolarization, manifested as QTc interval prolongation on the electrocardiogram, which could put patients at risk of Torsade de Pointes. In its letter of March 20, 2007, Otsuka concurred in the agency's determination to initiate withdrawal of the RAXAR NDA and waived its opportunity for a hearing, provided under 21 CFR 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), § 314.150(d), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of the NDA 20–695, and all amendments and supplements thereto, is withdrawn, effective (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 331(d)).

Dated: May 31, 2007.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E7–11427 Filed 6–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 24, 2007, from 8 a.m. to 5 p.m.

Location: Advisors and Consultants Staff Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6761, FAX: 301–827–6776, e-mail: *Johanna.Clifford@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the following new drug applications (NDAs): (1) NDA 022–042, EVISTA (raloxifene hydrochloride) Tablets, Eli Lilly and Co., proposed indications for the reduction in risk of invasive breast cancer in postmenopausal women with osteoporosis, and for the reduction in risk of invasive breast cancer in postmenopausal women at high risk of breast cancer; and (2) NDA 021–801, proposed trade name ORPLATNA (satraplatin capsules), GPC Biotech Inc., proposed indication for the treatment of patients with androgen independent (hormone refractory) prostate cancer (HRPC) that has failed prior chemotherapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 10, 2007. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 2, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 3, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 6, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–11496 Filed 6–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel, Corps members) for the period July 1, 2007 through June 30, 2008 is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/resources/fedreg-hpol/*. This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program, the NHSC Loan Repayment Program, and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Shortage Designation Branch in the Office of Workforce Evaluation and Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration; (2) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (3) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary, mental, and/or oral health services to a HPSA of greatest shortage; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice at the approved service location for a minimum of 40 hours per week with at least 32 hours per week in the ambulatory care setting. Obstetricians/gynecologists, certified nurse midwives (CNMs), and family practitioners who practice obstetrics on a regular basis, are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the minimum 40-hour per week total, include delivery and other clinical hospital-based duties. For all Corps personnel, time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) report to the NHSC all absences in excess of the authorized number of days (up to 35 work days or 280 hours per contract year); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. The UDS system allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for, its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2007–June 30, 2008, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary care HPSAs with scores of 14 and above are authorized for the assignment of Corps members who are primary care physicians, family nurse practitioners (NPs), physician assistants (PAs), or CNMs participating in the Scholarship Program; (2) mental health HPSAs with scores of 19 and above are authorized for the assignment of Corps members who are psychiatrists participating in the Scholarship Program; (3) dental HPSAs with scores of 18 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; and (5) HPSAs (appropriate to each discipline) with scores of 17 and above are authorized for priority assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 17 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving priority for placement of Corps members through the Loan Repayment Program (i.e., HPSAs scoring 17 or above). Placements made through the Loan Repayment Program in HPSAs with scores 16 or below will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. A listing of HPSAs and their scores is posted at *http://hpsafind.hrsa.gov/.*

Sites qualifying for automatic primary care and dental HPSA designations have been scored and may be authorized to receive assignment of Corps members if they meet the criteria outlined above and their HPSA scores are above the stated cutoffs. If there are any sites on the list with an unscored HPSA designation they are authorized for the assignment of Corps personnel participating in the Loan Repayment Program only, after assignments are made of those Corps members matching to scored HPSAs and only to the extent that funding remains available. When these HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment Programs allowed at any one site are limited to the following:

(1) Primary Health Care

(a) Loan Repayment Program—no more than 2 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 2 NPs, PAs, or CNMs.

(b) Scholarship Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs.

(2) Dental

(a) Loan Repayment Program—no more than 2 dentists and 2 dental hygienists.

(b) Scholarship Program—no more than 1 dentist.

(3) Mental Health

(a) Loan Repayment Program—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists; licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

(b) Scholarship Program—no more than 1 psychiatrist.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 28, 2008. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.cfm.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than July 16, 2007. This information should be submitted to: Susan Salter, Chief, Site Identification and Application Branch, Division of National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment & Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 7, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–11423 Filed 6–13–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate (NPPD), Telecommunications Services Priority (TSP) System; Agency Information Collection Activities: Request for Continuation of an Already Existing Collection for OMB Review, Comment Request

AGENCY: DHS, NPPD, Telecommunications Services Priority (TSP) System.

ACTION: Notice; 30-day notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS), has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The information collection was previously published in the **Federal Register** on April 11, 2007 at 72 FR 18263—18264 allowing for a 60-day public comment period. No comments were received on this existing information collection. The purpose of this notice is to allow an additional 30 days for public comments. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments DHS will use.

DATES: Comments are encouraged and will be accepted until July 16, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/ NPPD and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Nathan Lesser, Desk Officer, Department of Homeland Security Washington, DC 20528; and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Title: Telecommunications Services Priority (TSP) System (Standard Forms 314, 315, 317, 318, 319).

OMB Number: 1670–0005.

Affected Public: Individuals or households; businesses or other for profit; not-for-profit institutions; State, local or tribal government; foreign government.

Number of Respondents: 37.

Estimated Time per Respondent:

SF314 (TSP Revalidations for Service Users): .05 Minutes.
SF315 (TSP Request for Service Users): 1.25 Hours.
SF317 (TSP Action Appeal for Service Users): 3.0 Hours.
SF318 (TSP Service Confirmation for Service Vendors): .05 Hours.
SF319 (TSP Service Reconciliation for Service Vendors): 8.0 Hours.

Estimated Total Annual Burden Hours: 2,762.

Frequency of Response: On Occasion.

The Telecommunications Service Priority (TSP) System provides telecommunications service vendors a means of identifying the services that should be restored or provisioned first in the event of an emergency or crisis; and the legal protection giving a preference to certain users over others. This critical aspect of the TSP program benefits government at all levels as well as the general public. The collection includes mechanisms to collect information to request a priority, to obtain a sponsor for requesting a priority, and for other administrative requirements of the program, is required from any person or organization having an NS/EP service for which they wish priority restoration from the vendor providing the service. Information is also required to allow immediate installation of a new service to support NS/EP requirements. Information is required from vendors to allow the OMNCS to track and identify the telecommunications services that are being provided priority treatment. This is a previously approved collection.

Charlie Church,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E7–11495 Filed 6–13–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–47]

Notice of Submission of Proposed Information Collection to OMB; Historically Black Colleges and Universities (HBCU)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grants to assist nonprofit Historically Black Colleges and Universities (HBCU) of higher education expand their role and effectiveness in addressing community development needs, such as neighborhood revitalization, housing, and economic development, in their localities.

DATES: *Comments Due Date:* July 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0235) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Historically Black Colleges and Universities (HBCU).

OMB Approval Number: 2528–0235.

Form Numbers: SF–424, SF–424 Supplement, HUD–424CB, SFLLL, HUD–27300, HUD–2880, HUD–2990, HUD–2991, HUD–2993, HUD–2944A, HUD–40076, HUD–96010, HUD–96011.

Description of the Need for the Information and Its Proposed Use:

Grants to assist nonprofit Historically Black Colleges and Universities (HBCU) of higher education expand their role and effectiveness in addressing community development needs, such as neighborhood revitalization, housing, and economic development, in their localities.

Frequency of Submission: Semi-annually, Other Final Report.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	105	2.85		119		35,940

Total Estimated Burden Hours: 35,940.

Status: Extension of a currently collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 8, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–11429 Filed 6–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–46]

Notice of Submission of Proposed Information Collection to OMB; Section 108 Loan Guarantee Program Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

A provision of the CDBG program provides communities financing for economic development, housing rehab, public facilities, and physical development projects. The information collection is necessary in order to render judgments on the eligibility of the activities proposed to be financed with Section 108 loan guarantee assistance and to ensure that the loan guarantee does not pose a financial risk to the Federal Government.

DATES: *Comments Due Date:* July 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0161) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 108 Loan Guarantee Program Application.

OMB Approval Number: 2506–0161.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

A provision of the CDBG program provides communities financing for economic development, housing rehab, public facilities, and physical development projects. The information collection is necessary in order to render judgments on the eligibility of the activities proposed to be financed with Section 108 loan guarantee assistance and to ensure that the loan guarantee does not pose a financial risk to the Federal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	50	1		125		6,250

Total Estimated Burden Hours: 6,250.

Status: Extension of a currently collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 8, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–11430 Filed 6–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Northern Spotted Owl (Strix occidentalis caurina)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 60-day extension of the comment period for the Draft Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) (northern spotted owl).

DATES: Comments on the draft recovery plan must now be received on or before August 24, 2007.

ADDRESSES: Comments on the plan can be sent electronically to *NSOplan@fws.gov*, or mailed to NSO Recovery Plan, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, Oregon 97232. Copies of the draft recovery plan will be available by request from the same Portland address (telephone: 503–231–2194). An electronic copy of the draft recovery plan is also available at *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html*.

FOR FURTHER INFORMATION CONTACT: Paul Phifer, Northern Spotted Owl Recovery Plan Project Manager, at the Portland address identified above (telephone 503–724–1886, fax 503–231–2050).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. The Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the ESA requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period. Substantive comments on the recovery needs of the species or other aspects of recovery plan development may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal agencies or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The northern spotted owl inhabits structurally complex forests from southwest British Columbia through the Cascade Mountains and coastal ranges in Washington, Oregon, and California, as far south as Marin County. When the northern spotted owl was listed under the ESA as a threatened species on June 26, 1990, the major threats were identified as widespread loss and adverse modification of suitable habitat across the owl's entire range and the inadequacy of existing regulatory mechanisms to conserve the owl. Currently, populations of northern spotted owls are declining, especially in the northern parts of the species' range.

Scientific research and monitoring have reported that northern spotted owls generally rely on older forested habitats because such habitats contain the structures and characteristics required for nesting, roosting, and foraging. Recent landscape-level studies in several southern portions of the northern spotted owl's range suggest a mosaic of forest conditions may result in good northern spotted owl habitat, though other studies have not reported that finding.

The most important threat currently facing the northern spotted owl is believed to be competition with the barred owl (*Strix varia*). Actions associated with addressing the barred owl threat were given the highest recovery priority, meaning the action ''must be taken to prevent extinction or prevent the species from declining irreversibly in the foreseeable future.'' Other important threats to the northern spotted owl continue to be loss of habitat quality and quantity as a result of past activities and disturbances, and ongoing and projected loss of habitat as a result of fire, logging and conversion of habitat to other uses.

The draft recovery plan provides two options for recovery, and we are seeking public comment on the effectiveness of both options to achieve recovery. Both options are based on the same underlying science, and contain essentially the same recovery goal, objectives, criteria, and actions. The options differ in that option 1 identifies (*i.e.*, maps) the specific conservation area boundaries in which most of the recovery actions and criteria will be targeted. Option 2 does not designate specific conservation area boundaries, rather it provides a ''rule set'' that will help guide the Federal land management agencies when undertaking conservation actions for the northern spotted owl. Both options rely on Federal lands to provide the primary contribution for northern spotted owl recovery.

The intent of providing two options for public comment in a draft recovery plan is to promote open public discussion about how to successfully recover this species.

Public Comments Solicited

We are soliciting written comments on the draft recovery plan described. All comments received by the date specified above will be considered in the finalization of this plan. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

We would specifically appreciate comments on the following topics found in both options:

- The methods used to determine desired habitat percentages listed in Recovery Criterion 4. If recommendations are offered, respondents are asked to explain the scientific foundation supporting their comments;
- The biological need, design and feasibility of attempting to provide connectivity between the Olympic

Peninsula and central Washington northern spotted owl populations;

- The biological value in identifying conservation areas in southwest Washington and northwest Oregon;
- The practicality of Appendix E, which provides examples of how a salvage logging action (Recovery Action 22) may be implemented;
- The identified boundaries of the Managed Owl Conservation Areas (option 1 only) and the Conservation Support Areas;
- Methods for managing the threat posed by barred owls; and
- Ways to create incentives for private land owners and managers to support recovery of the northern spotted owl.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 25, 2007.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–11492 Filed 6–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1231–EB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0119

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by July 16, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0119), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0119 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On June 21, 2006, the BLM published a notice in the **Federal Register** (71 FR 35696) requesting comments on the information collection. The comment period closed on August 21, 2006. The BLM did not receive any comments.

We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Title: Permits for Recreation on Public Lands (43 CFR part 2930).

OMB Control Number: 1004–0119.

Abstract: The BLM manages the recreation use program on public lands according to the regulations at (43 CFR part 2930). These regulations implement the following statutes:

(1) The Land and Water Conservation Fund Act, as amended (16 U.S.C. 460*l*–6a, (b), (g));

(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701(a)(8)), (43 U.S.C. 302(b)), and (43 U.S.C. 303);

(3) The Sentencing Reform Act (18 U.S.C. 3571); and

(4) 36 CFR part 71.

The BLM uses this information to approve and collect fees for recreation use on public lands.

Burden Estimate per Form: We estimate the completion time for this form and non-form information that is submitted on occasion to the BLM by individuals and the private sector as follows:

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours
(a) Special Recreation Application and Permit (Form 2930–1) and non-form information in 43 CFR subpart 2932	1,450	8	11,600
(b) 43 CFR subpart 2933; Non-form information to reserve a fee-use campground site, to collect recreation use fees, and obtain a recreation use permit	364,395	1	364,395
Totals	365,845	....	375,995

Annual Responses: 365,845.

Application Fee per Response: 0.

Annual Burden Hours: 375,995.

Dated: June 8, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–2934 Filed 6–13–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The Alaska Resource Advisory Council will conduct its field trip to Nome, Alaska, from July 18–20, 2007, which includes a public meeting on Wednesday, July 18, at St. Joseph's Church beginning at 1:30 p.m. The meeting will include a brief update on land management plans followed by a public comment period beginning at 4:15 p.m. A community open house where Nome residents can meet informally with the council is scheduled from 5:15 p.m. to 6:15 p.m.

When making public comment, participants should know that their address, phone number, e-mail address, or other personal identifying information in their comment, along with their entire comment may be made publicly available at any time. Commenters can ask that personal identifying information be withheld from their comments but this cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *Danielle_Allen@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM.

Dated: June 7, 2007.

Gust Panos,

Acting State Director.

[FR Doc. E7–11532 Filed 6–13–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–62824, 7–08807]

Notice of Realty Action: Direct Sale of Federal Interest in Public Lands in Clark County, NV (N–62824)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer the Federal interest in public lands consisting of a reversionary interest, by direct sale, containing approximately 60 acres. The public lands have been designated for disposal within Clark County, Nevada, to Basic Management Incorporated (BMI) and will be offered for direct sale. The interest in land proposed for sale has been authorized and designated for disposal under the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), as amended (hereinafter ''SNPLMA''). The reversionary interest in the lands will be offered noncompetitively in accordance with the applicable provisions of Sections 203 and 209 of the Federal Land Policy Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), and FLPMA's implementing regulations, in particular 43 CFR 2711.3–3. The environmental assessment, map, approved appraisal report and other supporting documentation are available for review at the BLM, Las Vegas Field Office (LVFO), Las Vegas, Nevada.

DATES: Written comments regarding the proposed sale must be received by the BLM on or before July 30, 2007.

ADDRESSES: Comments regarding the proposed sale should be addressed to: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale and the land involved may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the BLM, Las Vegas Field Office (LVFO).

FOR FURTHER INFORMATION CONTACT: You may contact Anna Wharton, Supervisory Realty Specialist at (702) 515–5082. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: This sale is in conformance with the BLM, Las Vegas Resource Management Plan, approved October 15, 1998. BLM has determined that the sale action conforms with the land use plan decision LD–1 under the authority of FLPMA. The land contains no other known public values. The reversionary interest for the parcel will be sold at not less than the appraised fair market value (FMV) of the parcel, which has been determined to be $18,068,000.00. Appraisal of the reversionary interest was conducted in accordance with Federal appraisal standards and reviewed by the Department of the Interior prior to sale of public land or an interest in public land. On April 15, 1965, BMI, received a patent to approximately 60 acres of land under an Act of Congress dated August 27, 1954 (68 Stat. A223) (Act). Consistent with the Act, this patent was issued for the development, production, pumping, storage, transmission, and distribution of water. The patent contains a provision that states ''provided, that, whenever the land herein granted shall cease to be used for the purposes for which it was granted, the estate of the grantee or its assigns shall terminate and revest to the United States''. The land has been used by BMI for 39 years for the purposes allowed in the patent in providing water for the City of Henderson, Nevada's municipal water system. Basic Environmental Company, LLC (BEC) as successor to Basic Management Incorporated, has requested a purchase of the reversionary interest, the remaining interest in the patented land held by the United States.

Regulation 43 CFR part 2711–3–3(a) states that ''Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to * * * (2) A tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; and (3) There is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were purchased by other than the authorized user.''

Due to the patent that authorizes the existing improvements owned and maintained by BEC, and the continuing use of the land to provide municipal water to the City of Henderson, it is impracticable for the United States to sell the land to any entity other than the current title holder. The SNPLMA directs orderly disposal of land. In the opinion of the authorized officer, a direct sale to BEC, best serves the public interest. Existing improved lands consist of 19.3 acres and the balance equals 40.7 acres, totaling 60 acres.

Land Proposed for Sale

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 33, SE¼SE¼NE¼SW¼, E½NE¼SE¼SW¼, NE¼SE¼SE¼SW¼, S½NW¼SE¼, N½SW¼SE¼, and N½S½SW¼SE¼.

The lands described above contain 60 acres, more or less, identified as Clark County Assessor Parcel 160–33–801–001.

Terms and Conditions of Sale

The parcel is subject to the following:

1. When the remaining interest in the parcel of land is sold, the locatable mineral interests will be sold simultaneously as part of the land sale. The land identified for sale has no known mineral value for minerals located under the 1872 Mining Law, as amended. Acceptance of the offer to purchase will constitute an application for conveyance of these mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50 non-refundable filing fee for processing the conveyance of this mineral interest. Minerals that fall within the Mineral Leasing Act of 1920, and the Materials Act of 1947, as amended, are reserved under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. The parcel is subject to valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the federally approved Fair Market Value (FMV).

4. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any cost, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Cost, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or State environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with patented real property and may be enforced by the United States in a court of competent jurisdiction.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale; and the conveyance of any such parcel will not be on a contingency basis.

Maps delineating the subject interest in lands proposed for sale are available for public review at the BLM LVFO along with the appraisal.

Upon acceptance of the offer to purchase, BEC will submit 20% of the FMV to BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130. Within 180 days following payment of the deposit, BEC will remit the balance of the FMV to the BLM in the form of a certified check, money order, bank draft or cashier's check made payable to the Bureau of Land Management.

If in the opinion of the authorized officer, consummation of the sale is not fully consistent with FLPMA or other applicable laws or determined not to be in the public interest, the BLM may accept or reject any or all offers, or withdraw any portion of or interest in land from sale. If not sold, the parcel described in this Notice identified for a partial interest sale may be suspended from any further proposed actions without further legal notice. It is the buyer's responsibility to be aware of all applicable Federal, State and local governmental policies, laws, regulations and the historical use of the proposed property and the affect these lands would have pertaining to any future use or development.

Public Comments: The BLM Field Manager, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130, will receive written comments from the general public and interested parties up to 45 days after publication of this Notice in the **Federal Register**. Only written comments submitted by postal service or overnight mail to the Field Manager BLM LVFO, will be considered properly filed; e-mail, facsimile or telephone comments will not be considered as properly filed. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments this realty action will become the final determination of the Department of the Interior. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: May 18, 2007.

Angie Lara,

Acting Field Manager.

[FR Doc. E7–11446 Filed 6–13–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Chukchi Sea Planning Area Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of a Final Environmental Impact Statement (FEIS).

SUMMARY: The proposed federal action addressed in this FEIS (OCS EIS/EA MMS 2007–026) is to offer for lease

areas in the Chukchi Sea Outer Continental Shelf (OCS) that might contain recoverable oil and gas resources. This lease sale would provide qualified bidders the opportunity to bid on certain blocks in the Chukchi Sea OCS to gain conditional rights to explore, develop, and produce oil and natural gas. This FEIS is the National Environmental Policy Act (NEPA) analysis to enable the MMS to make informed decisions on the configuration of the lease sale and the applicable mitigation measures. In the FEIS, the potential direct, indirect, and cumulative environmental impacts of the sale, including estimated exploration and development and production activities related to the sale, on the physical, biological, and human environments in the Chukchi Sea area are analyzed. The FEIS also provides NEPA evaluation for exploration activities in the Chukchi Sea, including seismic survey geophysical permitting (30 CFR part 251), ancillary activities (30 CFR 250.207), and exploration plans (30 CFR 250.214). In addition, the FEIS provides information that the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) may possibly use for issuance of Incidental Harassment Authorizations to the seismic-survey industry to take marine mammals by harassment, incidental to conducting prelease and ancillary on-lease oil and gas seismic surveys in the Chukchi Sea. To address its NEPA responsibilities, the NMFS is a cooperating agency (as that term is defined in 40 CFR 1501.6).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, Ms. Deborah Cranswick, telephone (907) 334–5267.

SUPPLEMENTARY INFORMATION: In this FEIS, the MMS has examined the potential environmental effects of the Proposed Action and its alternatives. The Proposed Action (Alternative I) is to conduct Chukchi Sea OCS Lease Sale 193 in 2008. The resource estimates and scenario information included in this FEIS analysis are presented as a range of activities that could be associated with the sale, including exploration seismic surveying, on-lease ancillary activities, exploration and delineation drilling, development and production of OCS oil and gas resources, and lease abandonment. The Proposed Action would offer for lease approximately 6,156 whole and partial blocks (about 34 million acres) identified as the program area in the 2002–2007 5-Year Program. Although Sale 193 was scheduled under the 2002–2007 5-Year Program, it is being held under the 2007–2012 5-Year Program to accommodate the time required to complete the EIS analyses and process. The proposed Sale 193 area excludes up to a 50-mile-wide corridor along the coast, the polynya or spring lead system. Water depths in the sale area vary from about 95 feet (ft) to approximately 262 ft. A small portion of the northeast corner of the area deepens to approximately 9,800 ft.

Alternative II (No Lease Sale) is equivalent to cancellation of the Proposed Action as scheduled in the approved 5-Year Program. The opportunity for development of the estimated oil and gas resources that could have resulted from the Proposed Action would be precluded or postponed, and any potential environmental impacts resulting from the Proposed Action would not occur or would be postponed.

Alternative III (Corridor I Deferral) is the Proposed Action excluding an area comprising approximately 1,765 whole or partial blocks along the coastward edge of the sale area. This alternative would attempt to reduce potential impacts to subsistence hunting as well as various wildlife species and associated habitats.

Alternative IV (Corridor II Deferral) is the Proposed Action excluding an area comprising approximately 795 whole or partial blocks along the coastward edge of the sale area. This alternative was developed as a result of the 1987 Biological Opinion for the Chukchi Sea as recommended by the NMFS.

The MMS also examines potential environmental effects of prelease seismic survey geophysical permitting. The FEIS includes an analysis of two alternatives for exploration seismic surveys: Alternative A and Alternative B. All permitted seismic surveys would be subject to the standard stipulations for geological and geophysical (G&G) permit activities, additional measures to mitigate seismic-surveying effects, and the mitigation and monitoring requirements of the selected alternative (Alternative 6) from the Final *Programmatic Environmental Assessment (PEA) Arctic Ocean Outer Continental Shelf Seismic Surveys—2006,* dated June 2006 (USDOI, MMS, 2006a). Alternative A would allow pre-Sale 193 seismic surveying in the entire proposed Sale 193 area (the area under Alternative I). Alternative B would prohibit pre-Sale 193 exploration seismic surveys in the 795 whole or partial blocks in Corridor II Deferral area (Alternative IV) along the coastward edge of the proposed Sale 193 area. The Corridor II Deferral area was developed from the recommended conservation measures in the 1987 Biological Opinion from NMFS. The southern end of the corridor was expanded to encompass a portion of the Ledyard Bay Critical Habitat Area that lies within the proposed Sale 193 area.

The U.S. Fish and Wildlife Service concluded in its March 28, 2007, Biological Opinion for Chukchi Sea Planning Area Oil and Gas Lease Sale 193 and Associated Seismic Surveys and Exploratory Drilling that, based on the information available at this time, the action would not jeopardize the continued existence of the spectacled or Steller's eider, or destroy or adversely modify designated critical habitat. The NMFS concluded in its Arctic Region Biological Opinion, dated June 2006, that leasing and exploration activities are not likely to jeopardize the continued existence of the threatened, endangered, or candidate species under its jurisdiction; however, the potential additive effects of oil and gas activities associated with exploration, production, and transportation throughout the Chukchi Sea and neighboring Beaufort Sea is of concern. The NMFS concluded further that activities associated with seismic surveys in the Chukchi Sea may adversely affect but not jeopardize the continued existence of any species listed under the ESA that are under the jurisdiction of the NMFS.

FEIS Availability: To obtain a copy of the final FEIS, you may contact the Minerals Management Service, Alaska OCS Region, Attention: Resource Center, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, telephone 1–800–764–2627, or by e-mail at *akwebmaster@mms.gov.* You may also view the FEIS on the MMS Web site at *http://www.mms.gov/alaska.*

Written Comments: Interested parties may submit their written comments on this FEIS until 30 days after the publication of this notice, to the Regional Director, Alaska OCS Region, Attention: Sale 193 Coordinator, Minerals Management Service, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, or by e-mail to *akeis@mms.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives of organizations or businesses.

Dated: June 4, 2007.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E7–11517 Filed 6–13–07; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Preliminary)]

Circular Welded Carbon-Quality Steel Pipe From China

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations, commencement of preliminary phase countervailing duty investigation No. 701–TA–447 (Preliminary), and commencement of preliminary phase antidumping duty investigation No. 731–TA–1116 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of circular welded carbon-quality steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50, as well as 7306.50.10 and 7306.50.50, of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping duty investigations in 45 days, or in this case by July 23, 2007. The Commission's views are due at Commerce within five business days thereafter, or by July 30, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 7, 2007, by Allied Tube & Conduit, Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Northwest Pipe Co., Portland OR; Sharon Tube Co., Sharon, PA; Western Tube & Conduit Corp., Long Beach, CA; Wheatland Tube Co., Collingswood, NJ; and the United Steelworkers, Pittsburgh, PA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 28, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Trainor (202–205–3354) not later than June 25, 2007, to arrange for their appearance. Parties in support of the imposition of countervailing duties and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 3, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 11, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–11472 Filed 6–13–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–607]

In the Matter of Certain Semiconductor Devices, DMA Systems, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 7, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung Electronics Co., Ltd. of Korea. Supplements were filed on May 23, 2007 and June 5, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, DMA systems, and products containing same by reason of infringement of U.S. Patent Nos. 7,064,026 and 5,613,162. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 6, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor devices, DMA systems, and products containing same by reason of infringement of one or more of claims 1–6 of U.S. Patent No. 7,064,026 and claims 1–11 of U.S. Patent No. 5,613,162, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Samsung Electronics Company, Ltd., Samsung Main Building, 250, Taepyung-ro 2-ka, Chung-ku, Seoul 100–742, Korea.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint, as supplemented, is to be served:

Renesas Technology Corp., Marunouchi Building, 4–1, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100–6334, Japan.

Renesas Technology America, Inc., 450 Holger Way, San Jose, California 95134.

(c) The Commission investigative attorney, party to this investigation, is Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint, as supplemented, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint, as supplemented, and the notice of investigation. Extensions of time for submitting responses to the complaint, as supplemented, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, as supplemented, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, as supplemented, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, as supplemented, and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: June 6, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–11447 Filed 6–13–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Between the United States, the Commonwealth of Pennsylvania Department of Environmental Protection, the Allegheny County Health Department, and the Allegheny County Sanitary Authority To Resolve Certain Alleged Violations of the Clean Water Act

Notice is hereby given that on May 31, 2007, the United States filed with the United States District Court for the Western District of Pennsylvania, in Case No. 07–737, a proposed Consent Decree to resolve certain claims of the United States, the Commonwealth of Pennsylvania Department of Environmental Protection (''PADEP''), and the Allegheny County Health Department (''ACHD'') against the Allegheny County Sanitary Authority (''Alcosan'') under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311, 1342, and other related state and local authorities. In this action, the United States alleges that Alcosan violated the Clean Water Act by discharging pollutants into waters of the United States without a permit, and by discharging pollutants in a manner not contemplated by its National Pollutant Discharge Elimination System (''NPDES'') permit. These violations occurred primarily during wet weather, which causes Alcosan's system to quickly overload and to discharge through a network of over 300 outfalls that run along three main rivers in the area—the Allegheny, Ohio, and Monogahela Rivers. The United States, PADEP, and ACHD seek injunctive relief and the payment of civil penalties to redress these alleged violations.

The proposed Consent Decree is designed to promote a coordinated regional approach to the wet weather discharge from Alcosan's system. It requires Alcosan to develop and submit a long-term plan, in coordination with the 83 municipalities that contribute flows to Alcosan's system, to control the wet weather discharges from its system and to ensure compliance with its NPDES permit and the Clean Water Act. The proposed Consent Decree also requires Alcosan to pay a civil penalty to the Plaintiffs of $1.2 million, and to undertake at least $3.0 million in supplemental environmental projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Allegheny County Sanitary Authority*, D.J. Ref. No. 90–5–1–1–4414.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 Post Office & Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* In addition, a copy of the proposed Consent Decree may also be obtained from the Justice Department's Consent Decree Library by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $65.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ellen Mahan,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2931 Filed 6–13–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 31,007, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Town of Billerica*, Civil Action No. 07–11015. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA) alleges that the defendant Town of Billerica (''Town'' or ''Billerica'') violated the Clean Water Act, 33 U.S.C. 1251, *et seq.*, (''CWA'') at its Water Treatment and Waste Water Treatment Facilities (the, ''Water Facilities''). The violations alleged in the complaint include discharges of process waste water without a permit; violations of EPA storm water permitting requirements; and violation of effluent limits and monitoring and reporting requirements of its individual permits. The Consent Decree requires Billerica to pay a civil penalty of $250,000; achieve compliance with applicable provisions of the CWA; expend at least $50,000 on two supplemental environmental projects; and, undertake compliance audits with respect to the Town's Water Facilities.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Town of Billerica,* D.J. Ref. 90–5–1–08192.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/COnsent_Decrees.html.* In addition, a copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $14 payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck

Assistant Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 07–2930 Filed 6–13–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 1, 2007, a proposed consent decree was lodged with the United States District Court for the Northern District of Iowa in *United States* v. *MidAmerian Energy Company and the City of LeMars, Iowa,* Civil Action No. 07–4045. The proposed consent decree would resolve civil claims alleged in a complaint filed simultaneously with the degree, asserting liability against MidAmerican Energy Company (MidAmerican) and city of LeMars under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The United States' complaint, brought pursuant to CERCLA Section 107, 42 U.S.C. 9607, seeks recovery of response costs incurred or to be incurred by the United States for certain response actions taken at or in connection with the release or threatened release of hazardous substances at the LeMars Coal Gas Superfund Site in LeMars, Plymouth County, Iowa. The proposed consent decree would resolve those claims against MidAmerican and the City of Le Mars.

Under the proposed consent decree MidAmerican will pay $3.1 million and the City of LeMars will pay $1.5 million to the United States. The consent decree incorporates an administrative order that the City of LeMars agreed to enter into to assist EPA's response actions by performing work and providing institutional controls at the Site. In exchange for the payment of response costs and the performance of work the decree would provide MidAmerican and the City of LeMars with respective covenant not to sue, and the defendants would grant a covenant not to sue to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *MidAmerican Energy Company and the City of LeMars, Iowa,* D.J. Ref. No. 90–11–2–08214. (Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*)

The proposed consent decree may be examined at the Office of the United States Attorney, 401 First Street, SE., Suite 400, Cedar Rapids, IA 52401–1825, and U.S. EPA Region, 7901 North 5th Street, Kansas City, Kansas 66101. During the public comment period, the consent decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, or by e-mailing or faxing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov.*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please provide a check in the amount of $42 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resoures Division.

[FR Doc. 07–2932 Filed 6–13–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 8, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed.

OMB Number: 1219–0138.

Form Number: None.

Type of Response: Reporting and Recordkeeping.

Affected Public: Private Sector: Business or other for-profit (mining industry).

Number of Respondents: 45.

Estimated Number of Annual Responses: 44,768.

Average Response Time: Varies.

Estimated Annual Burden Hours: 9,083.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $87,137.

Description: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carryout its duty in protecting the safety and health of miners.

The Safety Standards for Underground Coal Mine Ventilation—Belt Entry rule provides safety requirements for the use of the conveyor belt entry as a ventilation intake to course fresh air to working sections and areas where mechanized mining equipment is being installed or removed in mines with three or more entries. This rule is a voluntary standard. If the mine operators choose to use belt air to ventilate working places, the provisions will maintain the level of safety in underground mines while allowing them to implement advances in mining atmospheric monitoring technology. This rule establishes alternate provisions that mine operators need to follow if they want to use belt air to ventilate working sections.

Section 75.351(b)(3) requires the posting at the surface location of an up-to-date map or schematic showing air flow directions and the location and type of all Atmospheric Monitoring System (AMS) sensors. Section 75.351(n)(1) requires that sensors used to detect CO or smoke be visually examined at least once each shift, when belts are operated as part of a production shift. If hazardous conditions are found during the visual exam, then a log of such conditions must be filed under existing Section 75.363(b)—Hazardous conditions; posting, correcting and recording (OMB approval 1219–0088).

Sections 75.351(n)(2) and 75.351(n)(3) require that a log be kept of every seven-day alarm test and every 31-day CO, smoke, or methane sensor calibration, respectively.

Section 75.351(o)(1)(i) requires that a record be made if the AMS emits an alert or alarm signal. The record would consist of the date, time, location, and type of sensor, and the reason for its activation. Section (o)(1)(ii) requires that, if a malfunction in the system occurs, a record be made of the malfunction and the corrective action to return the system to proper operating condition. We (MSHA) believe that such records are useful to the miner, the mine operator, and the Agency in determining areas of recurring problems. This will aid in ensuring proper operation of AMSs.

Section 75.351(o)(1)(iii) requires that the persons doing the weekly test of alert and alarm signals, the monthly calibration, or maintenance of the system make a record of these tests, calibrations, or maintenance. Section § 75.351(o)(3) requires that all records concerning the AMS be kept in a book or electronically in a computer system, that is secure and not susceptible to alteration. Section 75.351(p) requires the mine operator to keep these records for at least one year at a surface location and to make them available for inspection by authorized representatives of the Secretary and representatives of miners.

Section 75.351(q) requires that a record of annual AMS operator training be kept. The record will include the content of training, the person conducting the training, and the date the training is conducted. The record needs to be maintained at the mine site by the mine operator for at least one year.

Sections 75.352(a) and 75.352(b) require the designated AMS operator or other appropriate personnel to take actions promptly when malfunction, alert, or alarm signals are received. These requirements are parallel to those of Section 75.351(o).

Numerous provisions require action to modify the mine ventilation plan. Provisions under Section 75.371 Mine Ventilation Plan include: Section 75.371(ii) requires the locations where dust measurements are made in the belt entry, in accordance with Section 75.350(b)(3) be included in the mine ventilation plan; Section 75.371(jj) requires the locations where velocities in the belt entry exceed limits set forth in Section 75.350(a)(2), and the maximum approved velocity for each location must be shown in the mine ventilation plan; Section 75.371(kk) requires the locations where air quantities are measured as set forth in Section 75.350(b)(6) be included in the mine ventilation plan; Section 75.371(ll) requires the inclusion of point feed locations and their use in the mine ventilation plan; and Sections 75.371(nn), 75.371(oo), and 75.371(pp) require modification of the mine ventilation plan to show the length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from CO sensors, the lower alert and alarm setting for CO sensors, and the alternate instrument and the alert and alarm levels associated with the instrument, respectively.

The respondents are mine operators that elect to use belt air to ventilate working sections and areas where mechanized equipment is being installed or removed. The records will be used by coal mine supervisors and employees, State mine inspectors, and Federal mine inspectors. The records show that the examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety and health of miners working in belt air mines.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–11484 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 7, 2007.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Survivor's Form for Benefits.

OMB Number: 1215–0069.

Form Number: CM–912.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Number of Annual Responses: 2,000.

Estimated Average Response Time: 8 minutes.

Estimated Total Annual Burden Hours: 267.

Total Estimated Annualized capital/startup costs: $0.

Total Estimated Annual Costs (operating/maintaining systems or purchasing services): $704.

Description: The CM–912 is used to gather information from a beneficiary's survivor to determine if the survivor is entitled to benefits or the continuation of benefits.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721); Notice of Law Enforcement Officer's Death (CA–722).

OMB Number: 1215–0116.

Form Numbers: CA–721 and CA–722.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Number of Annual Responses: 30.

Estimated Average Response Time: 60 minutes for the Form CA–721 and 90 minutes for the CA–722.

Estimated Total Annual Burden Hours: 40.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The CA–721 and CA–722 are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of 5 U.S.C. 8191 et seq. The forms provide the basic information needed to process the claims made for injury or death.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: 29 CFR, Part 575—Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops.

OMB Number: 1215–0120.

Form Number: None.

Frequency: On occasion.

Type of Response: Reporting and Recordkeeping.

Affected Public: Farms.

Estimated Number of Respondents: 1.

Estimated Number of Annual Responses: 1.

Estimated Average Response Time: 4 hours.

Estimated Total Annual Burden Hours: 4.

Total Estimated Annualized capital/startup costs: $0.

Total Estimated Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Regulations 29 CFR part 575, in relevant part, sets forth the describes the information an employer or group of employers must submit when applying for a waiver of the youth employment provisions under FLSA section 13(c)(4). See 29 CFR 575.3–5. Regulations 29 CFR 575.8 specifies certain records employers must maintain.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Form Numbers: WH–380 and WH–381.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 391,000.

Estimated Number of Annual Responses: 15,058,850.

Estimated Average Response Time: 5 minutes for the Form WH–381 and 20 minutes for the WH–380.

Estimated Total Annual Burden Hours: 1,370,288.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $11,915,480.

Description: The Family and Medical Leave Act of 1993 (FMLA) requires private sector employers of 50 or more employees, and public agencies to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Records are required so that the Department of Labor can determine employer compliance with FMLA. These recordkeeping requirements are necessary in order for the DOL to carry out its statutory obligation under section 106 of FMLA to investigate and ensure employer compliance. By requiring employers to maintain these records, the DOL is able to determine employer compliance. Because these collections involve third-party notifications between the employer and the employee, the WHD created optional Forms WH–380 and WH–381 to assist employees and employers in meeting their regulatory notification obligations under the FMLA. Form WH–380 allows employees who are requesting FMLA leave based on a serious health condition to satisfy a mandatory requirement to furnish a medical certification (when requested) from their health care provider, including second or third opinions and recertifications. *See* 29 CFR 825.306. Form WH–381 allows employers to satisfy mandatory requirements to provide employees taking FMLA-leave with written notice detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. *See* 29 CFR 825.301(b). These collections are necessary to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA.

Agency: Employment Standards Administration.

Type of Review: Revision of currently approved collection.

Title: Energy Employees Occupational Illness Compensation Program Act Forms (Various).

OMB Number: 1215–0197.

Form Numbers: See below.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households; Business or other for-profit; and Federal Government.

BURDEN ESTIMATE BY FORM NUMBER

Form	Estimated number of annual responses	Average response time (hours)	Annual burden hours
EE–1	6,711	0.28	1,901
EE–2	14,331	0.35	5,016

BURDEN ESTIMATE BY FORM NUMBER—Continued

Form	Estimated number of annual responses	Average response time (hours)	Annual burden hours
EE–3	16,748	1.00	16,748
EE–4	4,187	0.50	2,094
EE–5A	2,884	0.50	1,442
EE–5B	500	0.50	250
EE–7	16,748	0.25	4,187
EE–7A	2,311	0.25	578
EE–7B	1,103	0.25	276
EE–8	968	0.08	81
EE–9	826	0.08	69
EE–10	100	0.08	8
EE–10A	37	0.50	19
EE–12	4,000	0.33	1,333
EE–13	51	16.00	816
EE/EN–20	7,557	0.08	630
Total	79,062	....	35,447

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $4,629.

Description: The information collected by these forms is used by Office of Worker Compensation Program claims examiners to determine eligibility for compensation. The information, with the medical evidence and other supporting documentation, is used to determine whether or not the claimant is entitled to compensation under Part B and/or E of Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. 7384 et seq.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–11491 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 8, 2007.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Presence sensing device initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Type of Response: Recordkeeping and Third-party Disclosure.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time per Response: Varies by task.

Total Burden Hours: 1.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Paragraph 1910.217(h) regulates the use of presence sensing devices (''PSDs'') used to initiate the operation of mechanical power presses; a PSD (e.g., a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. A mechanical power press using Presence Sensing Device Initiation (PSDI) automatically starts (initiates) the stroke when the device detects no operator within the danger zone near the press. The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with 29 CFR 1910.217(a) through (h).

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Derricks (29 CFR 1910.181).

OMB Number: 1218–0222.

Type of Response: Recordkeeping and Third-party disclosure.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 500.

Number of Annual Responses: 7,757.

Estimated Time per Response: Varies by task.

Total Burden Hours: 1,356.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The paperwork provisions of the Standard specify requirements for marking the rated load on derricks, preparing certification records to verify the inspection of derrick ropes, and posting warning signs while the derrick is undergoing adjustments and repairs. Certification records must be maintained and disclosed upon request.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Additional Requirements for special dipping and coating operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

OMB Number: 1218–0237.

Type of Response: Reporting and Third-party disclosure.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time per Response: 1 hour.

Total Burden Hours: 1.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The standard on Additional Requirements for Special Dipping and Coating Operations, 29 CFR 1910.126(g)(4)), requires employers to post a conspicuous sign near each piece of electrostatic detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic detearing operations.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–11497 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Bolivia, Cambodia, Colombia, the Democratic Republic of the Congo, the Dominican Republic, Indonesia, Morocco, the Philippines, Togo, and Uganda

June 14, 2007.

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 07–10.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 25, 2007.

Executive Summary: The U.S. Department of Labor, Bureau of International Labor Affairs, will award *up to USD 46.494 million* through 10 or more *Cooperative Agreements* to one or more qualifying organizations and/or Associations to combat *exploitive child labor* in the following 10 countries: Bolivia (up to $3.344 million), Cambodia (up to $4 million), Colombia (up to $5.1 million), Democratic Republic of the Congo (up to $5.5 million), the Dominican Republic (up to $4 million), Indonesia (up to $5.55 million), Morocco (up to $3 million), the Philippines (up to $5.5 million), Togo (up to $5 million), and Uganda (up to $5.5 million). Projects funded under this solicitation will seek to sustainably *withdraw* and *prevent children from entering exploitive labor* through the provision of *direct educational services* and *other project interventions*, and ensure *direct beneficiaries*' enrollment, *retention*, and *completion* of the education and/or training program(s) in which they are enrolled. Projects will also seek to *build capacity in target countries to eliminate exploitive child labor* and promote educational alternatives for children. Projects funded aim to complement and expand upon existing projects and programs aimed at eliminating *exploitive child labor*, particularly the *worst forms of child labor*, and improving *basic education* in the target countries. Applicants must respond to the entire Scope of Work outlined in this solicitation for each country for which an application is submitted.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by *Cooperative Agreement* to one or more qualifying organizations and/or *Associations* (hereinafter referred to as ''Applicant(s)'') for the purpose of promoting the elimination of *exploitive child labor*, particularly the *worst forms of child labor* (for additional information on these key terms, see Appendix A), in target countries. Projects funded under this solicitation will seek to achieve this goal by *withdrawing children from, and preventing children from entering, exploitive child labor* through the provision of *direct educational services*, including education and/or training programs, and *improving the capacity* of target countries to address *exploitive child labor.*

ILAB is authorized to award and administer *Cooperative Agreements* for this purpose by Section 20607 of the Revised Continuing Appropriations Resolution, 2007, Pub. L. 110–05, 121 Stat. 8 (2007). *Cooperative Agreements* awarded under this solicitation will be managed by ILAB's Office of Child Labor, Forced Labor, and Human Trafficking (OCFT). The duration of the projects funded by this solicitation is three to four years. The start date of program activities will be negotiated upon award of the *Cooperative Agreement*, but will be no later than September 30, 2007.

Please note that Appendix A provides USDOL's definitions for all key terms denoted in *italics* throughout the text of this solicitation. For ease of reference, the term ''child(ren)'' and ''child labor'' have not been denoted in *italics*, though definitions of each are included in Appendix A. *Child(ren)* are defined by USDOL as individuals under the age of 18 years. For section I.3.B., Applicants should note that there may be some differences between USDOL definitions of certain key terms and the definitions used by foreign governments. For example, definitions used by USDOL in this solicitation do not necessarily correspond to a foreign government's own definition of terms such as ''*youth*'' or ''*hazardous work.*

1. Background: USDOL Support for the Global Elimination of Exploitive Child Labor

The International Labor Organization (ILO) estimated that 218 million children ages 5 to 17 were engaged in child labor around the world in 2004. Children engaged in *exploitive child labor* on a full-time basis are generally unable to attend school, and children engaged in *exploitive child labor* on a part-time basis balance economic survival with schooling from an early age, often to the detriment of their education.

Since 1995, the U.S. Congress has appropriated $595 million to USDOL for efforts to combat *exploitive child labor* internationally. This funding has been used to support technical cooperation projects to combat *exploitive child labor* in more than 75 countries around the world. Technical cooperation projects funded by USDOL range from targeted action programs in specific sectors of work to more comprehensive programs that support national efforts to eliminate the *worst forms of child labor* as defined by ILO Convention 182. USDOL-funded projects seek to achieve five major goals:

1. Withdrawing or preventing children from involvement in *exploitive child labor* through the provision of *direct educational services*;
2. Strengthening policies on child labor and education, the capacity of national institutions to combat child labor, and formal and transitional education systems that encourage children engaged in or *at-risk* of engaging in *exploitive labor* to attend school;
3. Raising awareness of the importance of education for all children and mobilizing a wide array of actors to improve and expand education infrastructures.
4. Supporting research and the collection of reliable data on child labor; and
5. Ensuring the long-term sustainability of these efforts.

By increasing access to *basic education*, USDOL-funded projects help nurture the development, health, safety, and enhanced future employability of children engaged in or *at-risk* of entering *exploitive labor* in geographic areas or economic sectors with a high incidence of *exploitive child labor*.

Projects funded by USDOL–OCFT are subject to the provisions of the Government Performance and Results Act (GPRA), which was passed by Congress in 1993 to establish strategic planning and performance measurement in the federal government to ensure that taxpayers' dollars were being used efficiently and effectively for the public good. GPRA requires federal agencies to develop and submit strategic and annual performance plans that include performance goals and indicators. Each year federal government agencies receiving appropriated funds are required to submit to Congress a performance and accountability report. Congress uses these reports to make informed assessments of program effectiveness for future funding decisions.

For GPRA purposes, ILAB falls under USDOL's Strategic Goal 2: A Competitive Workforce: Meet the competitive labor demands of the worldwide economy by enhancing the effectiveness and efficiency of the workforce development and regulatory systems that assist workers and employers in meeting the challenges of global competition. Specifically, OCFT is required to measure Indicator 2K: Contribute to the elimination of the *worst forms of child labor* internationally. The GPRA indicators that OCFT measures across all of its child labor elimination projects, are: (1) The number of children *withdrawn or prevented from exploitive child labor* and provided education and/or training opportunities as a result of a USDOL-funded child labor elimination project; and (2) The number of countries with *improved capacity to address child labor* as a result of USDOL-funded child labor elimination projects. For more comprehensive definitions of USDOL–OCFT's GPRA Indicators, see Appendix A. For additional information on GPRA, please visit *http://www.whitehouse.gov/omb/mgmt-gpra/gplaw2m.html.*

In addition to its GPRA indicators, OCFT also collects information on two other non-GPRA, common indicators related to *direct beneficiaries*' *retention* in, and *completion*, of education and/or training programs (hereinafter referred to as *''direct educational services;''* for additional information on this key term, see Appendix A).

2. Factors Contributing to Exploitive Child Labor and Barriers to Education

There are complex factors contributing to children's involvement in *exploitive labor*, as well as barriers to education for children who are engaged in, or *at-risk* of entering, *exploitive child labor.* These include poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; tenuous labor markets; and weak child labor law enforcement. While these factors and barriers tend to exist throughout the world in areas with a high incidence of *exploitive child labor*, they manifest themselves in specific ways in the countries of interest in this solicitation.

Some factors unrelated to education that contribute to children entering *exploitive labor* include their families' need for extra income, children's need to provide a livelihood for themselves and/or their siblings, lack of parent(s) or caregiver(s), cultural practices, and lack of awareness of the hazards associated with *exploitive child labor*, including the *worst forms of child labor.* In addition, children have a variety of educational needs and encounter different barriers depending on their work status (e.g., *children withdrawn from exploitive labor*, underage children at risk of dropping out of school and joining the labor force, children engaged in *exploitive labor* in a particular sector).

3. Scope of Work

A. General Requirements

Each project must promote the five goals for USDOL-funded projects outlined in section I.1. Applicants should propose an innovative project strategy that will build on existing efforts to *withdraw children from*, or *prevent children from entering, exploitive child labor.* Applicants should identify and address the specific needs of proposed *direct beneficiaries*' to ensure (1) their long-term *withdrawal from*, or *prevention from entering, exploitive child labor*; (2) their involvement in *acceptable work*—for *direct beneficiaries* of legal working age, this may be accomplished through a reduction in the number of hours worked and/or improvement(s) in their working conditions in accordance with national labor laws and international standards, such as ILO Conventions 138 (Minimum Age Convention, 1973) and 182 (Worst Forms of Child Labor Convention, 1999); and (3) their enrollment in, *retention* in, and *completion* of, a *direct educational service.*

Note: For a child to be counted as a *direct beneficiary* for the purposes of USDOL's GPRA reporting requirements (see section I.1 above for more information on the GPRA), the *Cooperative Agreement* awardee (hereafter referred to as ''Grantee'') must have completed the following three (3) steps:

(1) Assess the specific needs of each child targeted by the project in order for the child to (a) be *withdrawn from*, or *prevented from entering, exploitive labor* and (b) be enrolled in an educational activity;

(2) Develop and implement an appropriate strategy for the child that provides a *direct educational service*; and

(3) Monitor and report to USDOL on the child's work status (e.g., is the child working in an *exploitive labor* situation?) and educational status (e.g., is the child still attending an educational or training program?).

USDOL considers strengthening legal frameworks and law enforcement practices that prohibit *exploitive child labor* and promoting adherence to national educational requirements that support universal access to *basic education* as critical strategies for achieving long-term impact in combating *exploitive child labor.* Applicants are encouraged to propose creative ideas that address the nexus between better enforcement of child labor and education laws and the improvement of educational opportunities for children. Applicants are expected to consider the economic, social, and cultural contexts of the target country (ies) when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others. Applicants must take into account country-specific issues that could affect project results, including those outlined in section I.3.B. for each target country, and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation. Applicants should demonstrate a thorough knowledge of previously piloted interventions and good practices to eliminate child labor in each target county and seek to build upon progress achieved by such past projects.

i. Focus on Action Research and Data Collection

In order to identify gaps, unmet needs and opportunities that could be addressed through a USDOL child labor elimination project, Applicants must conduct a needs assessment in preparing their application(s) to make a preliminary identification of the current working and educational status of the children that the Applicant proposes as *direct beneficiaries* of the project. It is expected that the information gathered during this assessment will be refined after award, although the application should present a clear indication of the criteria that will likely be used to select proposed *direct beneficiaries.* These criteria should be based on the target country's legislation related to child labor, including the *worst forms of child labor;* the minimum age for work; acceptable hours and conditions for children's work; and national policies related to child labor, such as a country-specific list of *hazardous work* for children that has been submitted to the ILO. The assessment, with data sources, must include information on the incidence and nature of *exploitive child labor*, particularly the *worst forms of child labor,* among proposed *direct beneficiaries*, hours and conditions of work, age and sex distribution of the proposed *direct beneficiaries*, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and child labor. In the proposed strategy, Applicants must consult and make reference to relevant literature and documents relating to child labor and the education of proposed *direct beneficiaries.* Applicants are encouraged to propose strategies for collecting further data on *exploitive child labor* and children's participation in schooling in the early stages of the project's baseline data collection. In addition, Applicants are encouraged to conduct small-scale research projects in support of the project's overall objectives, in particular on the *unconditional worst forms of child labor* where there is often a lack of systematic and reliable data. Applicants are encouraged to disseminate findings from such research and to use this information in formulating more targeted and coordinated responses to *exploitive child labor*, including the *unconditional worst forms of child labor.*

ii. Withdrawal or Prevention From Exploitive Child Labor Through Direct Educational Services and Other Project Interventions

Projects funded under this *Cooperative Agreement* solicitation must provide for the long-term *withdrawal of children from*, and *prevention of children from entering, exploitive child labor* through the provision of *direct educational services.* USDOL recognizes that the provision of *direct educational services* alone may in some cases be insufficient to ensure the complete or sustained *withdrawal of children from exploitive child labor.* For this reason, Applicants are also encouraged to propose *other project interventions* as part of a package of services for *direct beneficiaries.* Applicants are encouraged to be creative in proposing comprehensive cost-effective interventions that will have a demonstrable impact in eliminating *exploitive child labor* and promoting *direct beneficiaries*' enrollment, *retention* in, and *completion* of *direct educational services* in the geographic areas and/or sectors in which children are engaged in, or *at-risk* of engaging in, *exploitive child labor.* Applicants should address low rates of school enrollment; availability of and access to *direct educational services*, particularly in rural areas; and the quality of such educational services. Applicants should develop strategies to increase the perceived relevance of education and training for children engaged in, or *at-risk* of engaging in, *exploitive labor*, their families and their communities with an aim toward increasing school enrollment. Applicants should also address the unique barriers to education for girls, particularly in rural areas, and incorporate these into the proposed interventions. Applicants may propose solutions for education delivery, such as non-formal schools, including multi-grade programs in rural areas where formal schools may be unavailable, especially at the secondary level. Projects may also support professional training for teachers and provide incentives to children, such as books and uniforms, in-school feeding programs, school supplies, and transportation assistance to remove educational barriers.

For individual target countries, Applicants must demonstrate knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems; develop an approach that successfully enrolls children in educational programs with minimal delay and without missing an academic year or program cycle; and address the non-education factors contributing to children's involvement in or risk of entering *exploitive labor.* If cultural traditions and norms impact decisions about schooling, Applicants must show how education programs would be sensitive and responsive to these traditions, particularly as they relate to girls' education.

Please Note: For the purposes of GPRA, enrollment in a *direct educational service* is not the sole criterion that defines a child as *withdrawn from exploitive child labor.* For example, a child who attends a USDOL-supported non-formal education program in the morning and works under hazardous conditions in mining during the afternoon and evening should not be counted as *withdrawn* or *prevented from exploitive child labor.* That is, if before program intervention, a child is not going to school and is working in a *worst form of child labor*, and, after program intervention, the child is now enrolled in school but continues to work in a *worst form of child labor*, then that child is not, by definition, *withdrawn from exploitive child labor* and should not be counted in the withdrawn/prevented indicator. The process of withdrawing a child from *exploitive child labor* may take some time. Children should only be counted as *withdrawn* at the point at which the child is no longer working in *exploitive child labor* (this includes no longer working at all or working under improved working conditions such as shorter hours and/or safer conditions) and is benefiting from the education and/or training program(s) provided by the USDOL-funded project. For more information on GPRA, see section I.1 Background: USDOL Support for the Global Elimination of *Exploitive Child Labor.*

iii. Clear and Specific Outcomes

Within the countries identified in this solicitation, the Applicant must identify the geographic areas and/or sectors of greatest need, and establish (1) the number of children that the project is targeting for *withdrawal from exploitive child labor*, and (2) the number of children the project is targeting for *prevention from exploitive child labor* through the provision of *direct educational services* and *other project interventions.* Applicants must use the definitions provided in Appendix A when establishing these targets. Applicants' strategies should address the specific and contextual factors that contribute to children engaging in *exploitive labor* and the barriers to education that they face in target countries. Brief background information on these issues for the target countries is provided in section I.3.B. Country-Specific Requirements. Applicants must be able to identify the specific needs of proposed *direct beneficiaries* in order to ensure (1) their long-term *withdrawal* or *prevention from exploitive child labor*; (2) their involvement in *acceptable work*—which for *direct beneficiaries* of legal working age, may be accomplished through a reduction in the number of hours worked and/or improvement(s) in their working conditions in accordance with national labor laws and international standards, such as ILO Conventions 138 and 182; and (3) their enrollment, *retention* in, and *completion* of a relevant *direct educational service.*

Expected outcomes/results of the project include: (1) Reducing the number of children engaged in, or *at-risk* of entering, *exploitive child labor*; (2) increasing and/or improving educational opportunities for children who are engaged in, or *at-risk* of entering, *exploitive child labor*, particularly the *worst forms of child labor*; (3) ensuring *direct beneficiaries*' enrollment, *retention* in, and *completion* of *direct educational services*; (4) facilitating the successful transition of *direct beneficiaries* from non-formal education programs into formal schools, vocational programs, or *acceptable work*; and (5) ensuring the sustainable, long-term *withdrawal* and *prevention* of *direct beneficiaries* from *exploitive child labor.*

iv. Collaboration and Leveraging Resources

Due to the limited resources available under this award, Applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the Grantee must work cooperatively with national stakeholders in developing project interventions, including the Ministries of Labor, Education, and other relevant ministries or government bodies. Applicants are encouraged to work with other key stakeholders, including international organizations; nongovernmental organizations (NGOs); national steering/advisory committees on child labor and education; faith and community-based organizations; trade unions, employers' and teachers' organizations; and children engaged in *exploitive child labor* and their families. Furthermore, Applicants are strongly encouraged to collaborate with existing projects, particularly those funded by USDOL, including other EI projects, Timebound Projects of Support (TBP) and other projects implemented by ILO–IPEC. For additional information on collaboration, see section VIII.1.

Applicants are encouraged to leverage project resources by collaborating with entities engaged in efforts that could contribute to the elimination of *exploitive child labor*, including efforts that promote children's access to educational and training opportunities and that address poverty—a major factor that increases the likelihood that children will engage in *exploitive child labor.* Applicants are also encouraged to secure concrete commitments from business entities and individual business leaders to engage in partnerships to reduce child labor and increase educational opportunities for *direct beneficiaries.* Ideas for business involvement could include, but are not limited to the following: scholarships, donations of goods, mentoring and volunteering by employees, assistance in awareness raising, provision of internships for children/*youth* and/or teachers during vacation periods that would help them improve leadership and other skills for implementing programs to address *exploitive child labor.* Please note that applications that propose non-U.S. Federal Government resources that significantly expand the dollar amount, size, and scope of the project, in the form of matching funds or other cost sharing arrangements, are eligible for up to five (5) extra points, as discussed in section V.1.F. However, Applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks and priorities. Applicants are advised that there are specific requirements associated with proposing matching funds and cost sharing arrangements, outlined in section III.3, which do not apply to leveraged resources.

Note to Applicants: USDOL has notified host government ministry officials of the proposed project. During the preparation of an application for this Cooperative Agreement solicitation, Applicants are encouraged to discuss proposed interventions, strategies, and activities with host government officials and other key stakeholders noted above.

v. Sustainability

USDOL considers the issue of sustainability to be of paramount importance and recognizes that questions of sustainability must be addressed at all stages, including project design, implementation, and evaluation. From their inception, project strategies should foster sustainability. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families, this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and schooling. Applicants are encouraged to develop approaches that support child and *youth* participation in project efforts to eliminate the *worst forms of child labor.* Applicants are encouraged to identify local organizations in the target country, including type of local organizations (e.g., NGO, community-based, rural, indigenous), which could potentially implement or contribute to a future project. In addition, as child labor elimination projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, Applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community-based systems, that can complement government efforts to monitor children's work and educational status beyond the life of the project and enforce the country's child labor and education laws.

B. Country-Specific Requirements

Combating Exploitive Child Labor Through Education in Bolivia

i. Background

Bolivia is a country with numerous socio-economic disparities and challenges, particularly for members of indigenous groups who, according to the 2001 Census, constitute approximately 62 percent of the population. Bolivia has one of the highest rates of poverty and child labor in the Americas, with over 23 percent of children ages 7 to 14 years working in 2002. Bolivia's socio-economic challenges are made more acute by natural disasters such as the recent severe flooding and resulting humanitarian crisis in the Departments of Santa Cruz, Beni and Cochabamba.

Bolivian children work in agriculture, including in the production of sugar cane and Brazil nuts in Santa Cruz, Beni, and Pando. In cities such as Oruro, Potosi, and La Paz, children are engaged in activities such as begging, street vending, shining shoes, and assisting transport operators. Children work in industry, construction, small businesses, hotels and restaurants, and traditional small-scale mining. In the valleys, children smuggle goods and traffic drugs. The commercial sexual exploitation of children (CSEC) is a problem in Bolivia, particularly in the Chapare region and in urban areas. A study sponsored by the International Organization for Migration (IOM) and the Organization for American States (OAS) of urban centers in Bolivia found commercial sexual exploitation of girls from Argentina, Paraguay, Brazil, Chile, and Colombia. In some cases, indigenous girls are brought or sent by their parents from rural to urban areas to work as domestic servants for higher-income families in exchange for education, clothing, room, and board. These girls often end up in situations that amount to indentured servitude and/or forced labor. Bolivian children are trafficked internally for the purpose of CSEC, agriculture and mining. In the south of Bolivia, child labor has been observed among debt-bonded, landless families living on haciendas (large farms).

In January and February 2007, unprecedented rainfall totals nearing 3 times the annual average resulted in severe flooding of the highlands and the Amazon River, affecting, in particular, the Departments of Santa Cruz, Beni, and Cochabamba. Rural families working in subsistence farming were particularly hard hit, and it is likely that the number of children *at-risk* of involvement in *exploitive child labor* has risen in these areas as a result of the flooding. This natural disaster caused extreme damage to houses, crops, roads, and other basic infrastructure including schools, many of which closed down or are being used as shelters for the displaced. The disaster has also affected the national debate on land reform and autonomy at the regional, departmental and municipal levels.

Bolivian law sets the minimum age for employment at 14 years, except in the case of apprenticeships. Children ages 14 to 18 years must have the permission of their parents or of government authorities to work. The law requires employers to grant ''adolescent'' workers time off to attend school during normal school hours. The 1999 Child and Adolescent Code defines ''adolescents'' as persons ages 12 to 18 years. The Ministry of Labor is responsible for enforcing child labor provisions in the formal sector, but only employs 15 labor inspectors to work throughout the country to enforce child labor regulations and other labor issues.

ii. Relevant Policies, Programs, and Projects

The Government of Bolivia's policy framework to address child labor is the National Plan for the Progressive Eradication of Child Labor (2000–2010). A three-year sub-plan (2006–2008) to combat child labor prioritizes the elimination of the *worst forms of child labor*, the development of national policy against child labor, and inter-institutional and inter-ministerial coordination. Although resources for implementation have been limited, the plan focuses on children working in the mining, sugar cane, and urban sectors of the country. A 2003 Domestic Worker's Law addresses some of the abuses committed towards child domestic workers. In 2005, the UN Committee on the Rights of the Child identified hazardous domestic work, the sugar cane and mining industries, CSEC, and the trafficking of children for CSEC and other purposes, as the child labor sectors in Bolivia that are in greatest need of special attention. The Bolivian Congress has approved reforms to address CSEC, and has criminalized and set penalties for all types of trafficking in persons.

Bolivia also faces challenges in providing education to its children and *youth* under 18, who constitute 45 percent of the country's population. The Constitution of Bolivia establishes free and compulsory primary education for children, yet because of the high rate of child labor and other education and non-education system barriers, many Bolivian children fall behind in their education. In 2002, despite a high rate of enrollment in primary schools, only 81 percent of students were likely to reach grade 5. Although UNESCO estimates a primary to secondary transition rate of 91 percent in Bolivia, UNICEF estimates that only 39 percent of working children continue with their schooling.

In order to facilitate children's access to social services such as health and education, the Government of Bolivia is working with UNICEF to provide free birth and identity documents to the estimated 12 percent of children ages 0–9 years who lack birth certificates. In the past, the government instituted programs to benefit both working children and indigenous children, including the development of a flexible curriculum designed to keep working children and adolescents in school by offering night classes through the Ministry of Education's Vice-Ministry of Alternative Education.

Bolivia's 1994 education reform program led to the creation of special programs to train teachers in bilingual instruction and publication of texts and other teaching materials in indigenous languages. There have been programs, such as those implemented by UNICEF, to improve educational infrastructure and to increase the relevance and learning of indigenous children through intercultural bilingual education. Currently, the Government of Bolivia focuses on universal literacy, improving access to *basic education* in rural areas, and incorporating indigenous languages and cultures into the school curricula. In the past, the government also supported previous USDOL-funded programs to combat child labor in small-scale traditional mining in the Andean region, and to improve access to and quality of *basic education*. Given the high rates of poverty and low levels of involvement in schooling, children in Bolivia, particularly indigenous children, have historically been highly vulnerable to exploitive forms of child labor. The Government of Bolivia has identified the importance of addressing the issues of labor exploitation and education reform. The government has recently proposed an education reform law that entails a curriculum change to address historic exclusion and discrimination of indigenous children, embracing the linguistic diversity of Bolivia's Quechua, Aymara, and Spanish-speaking populations.

The enforcement of these plans and laws is challenging because of limited resources, citizens' lack of faith in the justice system, corruption, a slow judiciary system, and political divisions and turmoil. The OAS Justice Center of the Americas notes that those who suffer most from this legal situation are the poor indigenous population and workers in the informal economy.

iii. Scope of Work

Taking into account the challenging implementing environment in Bolivia and the current government's attention and priority to the unmet needs of the most disadvantaged sectors of the population, Applicants must propose a creative and innovative approach to address the challenges of reintegrating and educating children who have been engaged in the *worst forms of child labor*. Applicants must also take into account any cross-cutting themes (discussed below) that could affect project results in Bolivia and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation.

1. Specific Target Groups, Sectors, and/or Geographic Focus

In support of the National Plan for the Progressive Eradication of Child Labor (2000–2010), Applicants are encouraged to target children working under hazardous and/or exploitive conditions in urban domestic service, agriculture, mining, and CSEC. Applicants should pay special attention to children who may have been trafficked for *exploitive labor* and/or engaged in forced labor. Applicants may identify other target sectors where children are *at-risk* or involved in other *worst forms of child labor*, but should provide a convincing justification for inclusion of such target sectors. Since indigenous children are the largest population involved in the *worst forms of child labor*, the project should pay special attention to their needs and provide a large share of benefits to these children. Given the recent humanitarian assistance needs in the Departments of Santa Cruz, Beni, and Cochabamba, Applicants may choose to focus on child labor issues that existed prior to, and/or may have been exacerbated by, the severe flooding in these areas.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants should support the Government of Bolivia's policy framework to address child labor, the National Plan for the Progressive Eradication of Child Labor 2000–2010, and consider the three-year sub-plan (2006–2008) that focuses on children working in the mining, sugar cane, and urban sectors of the country. If focusing on domestic service, or CSEC and trafficking, Applicants should work to strengthen the implementation and enforcement of recent legal reforms in these areas of domestic workers and the commercial sexual exploitation of minors. If working in areas of the recent floods, Applicants should coordinate with other donors providing assistance, and complement rather than duplicate existing efforts.

3. Implementing Environment/Cross-Cutting Themes

Bolivia has experienced recurrent political and economic unrest and instability, which has an impact on the implementation of development projects. The government has committed itself to deep political, economic and social transformations, and the country is engaged in intense debate on themes including cultural identity, education reform, judicial reform, land reform, and decentralization and political autonomy. Furthermore, the severe flooding in January and February 2007 has had a major impact in the highlands and the Amazon River, affecting, in particular, the Departments of Santa Cruz, Beni, and Cochabamba, and rural families working in subsistence farming in these areas. Applicants should consider how these factors might affect the project in the geographic areas where the project would be implemented and propose a design that would contribute to mitigating the effects of these factors.

4. Project-Specific Strategies

Applicants must propose a strategy for strengthening the capacity of Bolivian government and civil society organizations to identify and assist children engaged in or *at-risk* of *exploitive labor*, particularly the *worst forms of child labor*. The complexity of the issue of child labor requires inter-institutional coordination among many public and private agencies and institutions. Applicants should identify how the project will productively engage existing public and private service programs in the intervention area(s) to ensure that project goals will be met, and project efforts will become sustainable. Evaluations of USDOL projects in the Andean region have noted incidents of weak local organizational capacity and recurring social unrest (e.g., strikes, demonstrations, work-stoppages, road closures). Applicants should indicate to what extent these challenges might be significant in the areas where the project would be implemented, how they would be addressed, and how relationships between indigenous and non-indigenous organizations working for the benefit of children, leaders, and groups could be promoted to address the problem of *exploitive child labor*. Given the current debates in Bolivia on decentralization and autonomy at the regional, departmental and municipal levels, Applicants should also consider how this could lead to changes that might affect implementation of the project, and focus on building capacity to promote sustainability.

Since indigenous children represent the largest population involved in *exploitive child labor*, it is likely that they will constitute a significant proportion of the *direct beneficiaries* served by this project. Given the current priorities of the government to provide programs to the benefit of these groups, Applicants should demonstrate considerable knowledge of Bolivian indigenous culture and movements and indigenous values regarding education and child labor. This knowledge should be incorporated into the project design to ensure ownership and involvement of indigenous groups. Applicants must develop a strategy that will increase the relevance of education for indigenous children, their parents, and the urban, rural, and/or peri-urban communities where they live. Applicants should develop a program that can operate in the context of the government's emphasis on the use of indigenous languages and culture as part of the larger education and curricula reform efforts. Applicants should also identify and address additional social, cultural, or other factors that should be taken into account in designing the project. In no way, however, should project strategies exclude or marginalize non-indigenous children who could also qualify as *direct beneficiaries* of this project.

Combating the Worst Forms of Child Labor in Cambodia

i. Background

After decades of violence and armed conflict, the Government of Cambodia has experienced positive economic growth since 1999 due in large part to its resilient garment export sector and growing tourism industry. The long-term development challenges for Cambodia will be to encourage rural development and build basic infrastructure; bridge the income gap among citizens; improve access to and quality of education; and increase economic growth that spurs job creation, in light of the country's demographic transition. At least 50 percent of the population is under 21 years old, with many children and *youth* lacking appropriate education and productive skills.

Key to accomplishing Cambodia's development goals will be to remove and prevent children from the *worst forms of child labor*, especially *hazardous work* in agriculture. Children begin working at a very young age, some as early as age six, with many dropping out of school to work exclusively. According to the Understanding Children's Work (UCW) Project, approximately 45 percent of children ages 5 to 14 years were found working in 2001. The majority of working children were found in the rural agricultural sector (76.5 percent), followed by services (17.7 percent), manufacturing (4.9 percent) and other sectors (0.9 percent). Economically active children in Cambodia work an average of 22 hours per week, which increases to 31 hours when household chores are taken into account. Non-Khmer children, such as Vietnamese migrant children, are more likely to be working than Khmer children.

Child labor is most prevalent and severe in three provinces: Banteay Meanchey, Prey Veng and Siem Reap. However, other provinces such as Otdar Meanchey Cham, Phnom Penh, Kandal, and Takeo also show high prevalence rates. Working children facing the most obstacles to schooling and greatest risk of dropping out are in Kaoh Long, Mondol Kiri, and Preah Vihear. Children most *at-risk* of being trafficked to urban areas in Cambodia or outside the country live in the rural districts of Kompong Cham, Battambang, Svey Rieng, Prey Veng, Kandal, and Takeo.

Hazardous work by children occurs in both rural and urban areas, and includes work on commercial rubber plantations, in salt production, fish processing, portering, brick-making, and garbage-picking. Children also work in restaurants and in handicrafts and related industries. Street children engage in scavenging, begging, and shoe polishing. Children, primarily girls, also work in domestic service. Most girls working as child domestic workers are 14 to 17 years of age, though it is not uncommon to find girls as young as 8 or 9 years of age. Many child domestic workers typically work 12 to 16 hours a day, 7 days a week, preventing them from going to school and learning productive skills.

Children are also involved in other *worst forms of child labor*. Certain provinces of the country have higher incidence of the *worst forms of child labor*, based on their geographic characteristics, proximity to borders, levels of poverty, etc. Areas designated as Special Economic Zones may attract workers, including child workers, and increase migrant flows and vulnerability. There have been documented patterns of children migrating to large cities for work, only to find themselves in various forms of exploitive or abusive labor. The commercial sexual exploitation of children (CSEC) is a problem in Cambodia. Cambodia is reported to be a country of origin, transit, and destination for trafficking in children for the purposes of CSEC as well as various forms of work, including forced labor and begging. Internationally, Vietnamese children are trafficked into Cambodia for CSEC and forced labor and Cambodian children are trafficked to Thailand and Vietnam.

Although Cambodia abolished school fees in 2001, the prohibitive costs of schooling (i.e., school supplies, uniforms); poor quality and relevance of education (i.e., limited availability of instructional materials, shortage of trained and motivated teachers); and inadequate access to schools (i.e., distance/transportation, primary schools lacking full range of grades, no secondary schools in many communities) contribute to children entering into *exploitive labor*, particularly in rural areas. School enrollment in the rural areas continues to lag behind urban areas. Only about 20 percent of rural children receive education in grades 7–9, and rural girls are 47 percent less likely to receive an education than boys. As of 2003, 60 percent of children who started primary school were likely to reach grade 5. The situation is compounded by a shortage of non-formal schools and literacy programs in rural areas.

ii. Relevant Policies, Programs, and Projects

A number of efforts are currently being undertaken by the Government of Cambodia, international organizations, and nongovernmental organizations (NGOs) to directly address *exploitive child labor* in Cambodia, as well as the underlying causes of child labor such as poverty and lack of resources. In 2006, the Government of Cambodia ratified both ILO Convention 182 on the Elimination of the Worst Forms of Child Labor and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The government has drafted a National Plan of Action for the Elimination of the Worst Forms of Child Labor, and has set time-bound targets for reducing the proportion of children engaging in the *worst forms of child labor* by 2015. The National Steering Committee on Child Labor was reconstituted in September 2006 to guide the country's efforts toward eliminating child labor under the National Plan of Action for the Elimination of the Worst Forms of Child Labor. Child labor was included as a priority issue in the first two-year Strategic Plan of the Ministry of Labour and Vocational Training for 2007–08. In addition, child labor concerns have been incorporated into the government's major development frameworks, including the National Strategic Development Plan (NSDP) 2006–2010 and the Education Strategic Plan (ESP) 2006–2010.

In addition to the unconditional *worst forms of child labor* identified under ILO Convention 182, the government has drafted a ministerial order, known as a Prakas, identifying 16 other categories of *worst forms of child labor* to be targeted for elimination. They are: Portering; domestic service; waste scavenging/rubbish picking; work in rubber and tobacco plantations; fishing; work in agricultural plantations; brick making; salt production; handicrafts; processing sea products; stone and granite breaking; quarrying; coal mining; restaurant work; and begging. The Ministry of Labour and Vocational Training has the primary responsibility for enforcement of child labor laws and regulations. Cambodia's Labor Law defines 15 as the minimum age for work (18 for *hazardous work*), although children between 12 and 15 may do light, non-hazardous work that does not prevent regular attendance at school or other training programs. Employers who violate the law may be fined 31 to 60 days of the base daily wage. The Labor Law prohibits work that is hazardous to the mental and physical development of children under age 18 and prohibits all forced or compulsory labor, including in agriculture and domestic work. However, the Labor Law currently applies only to the formal sector, while child labor exists mostly in the informal sector.

Addressing trafficking in persons is a priority for the Government of Cambodia, which drafted a National Plan of Action Against Trafficking in Persons and Sexual Exploitation 2005–2009. The National Plan of Action Against Trafficking in Persons and Sexual Exploitation expands the scope of a previous plan to include trafficking for both sexual and labor exploitation purposes. Along with Burma, Laos, the People's Republic of China, Thailand, and Vietnam, Cambodia is signatory to the ''Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).''

Cambodia is currently participating in several USDOL-funded projects designed to combat *exploitive child labor* and provide educational opportunities for children. The ''Support to the Cambodian National Plan of Action on the Elimination of the Worst Forms of Child Labor: A Timebound Approach,'' implemented by ILO-IPEC, aims to withdraw 4,260 and prevent 5,650 children from working in exploitive conditions in several sectors: Brick-making (Shanoukville, Siem Riep, Kampong Cham); portering (Banteay Meancheay); rubber-making (Kampong Cham); domestic service (Phnom Penh); salt production (Kampot and Kep); fish processing (Shanoukville, Kampot, Kep); services such as hotel work, restaurant work, and beer promotion (Siem Riep and Phnom Penh); and trafficking (Shanoukville, Banteay Meancheay, Prey Veng). In addition, the project is building a robust enabling environment for the development and implementation of policies and programs on child labor and increasing the knowledge and capacity of the government and stakeholders on child labor.

USDOL is currently funding three child labor and education projects in Cambodia, implemented by Hagar International, World Education, and Winrock International. The Hagar International project assists trafficked women and children by providing temporary shelter, rehabilitative and counseling services, literacy and vocational training classes, and assistance with reintegration into their communities of origin or new communities. The World Education project works in Prey Veng, Kompong Cham, Banteay Meanchay, and Phnom Penh to reduce the number of children trafficked and/or involved in CSEC and domestic labor. As of September 2006, the project had prevented 15,749 children from being trafficked through provision of educational and other services. Cambodia is also part of CIRCLE, a global project implemented by Winrock International and funded by USDOL that aims to reduce the engagement of children in the *worst forms of child labor* by funding small-scale projects carried out by community-based organizations. CIRCLE project strategies in Cambodia have included awareness-raising among children at high risk of dropping out of school, and strengthening education systems to better serve children who have been trafficked and/or involved in CSEC, out-of-school *youth*, and child migrants. In addition, external funding to target poverty reduction, increase access to basic services, and strengthen institutions from partners such as the World Bank, the Asian Development Bank, and several other UN agencies continues to support programs in Cambodia.

iii. Scope of Work

Applicants should design a creative project strategy to build partnerships to combat *exploitive child labor* and improve education for children engaged in, or *at-risk* of entering, *exploitive labor*, taking into account the socio-economic conditions in Cambodia. Applicants must also take any cross-cutting themes (discussed below) into account that could affect project results in Cambodia and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or to reduce obstacles to, successful implementation.

1. Specific Target Groups, Sectors, and/or Geographic Focus

The Government of Cambodia has identified priority sectors for attention under its draft National Plan of Action for the Elimination of the Worst Forms of Child Labor. In line with the draft National Plan of Action for the Elimination of the Worst Forms of Child Labor, USDOL has identified hazardous child labor in agriculture as the primary sector of focus for this project. Specifically, Applicants should prioritize children engaged in *hazardous work* on commercial farms and subsistence agriculture, where children's work prevents them from going to school, exposes them to harmful chemicals, and places them at risk of injury from heavy loads, agricultural tools, or machinery. Specific sub-sectors within agriculture should be clearly identified by Applicants. Applicants should also propose additional sectors of focus that are in accordance with the draft National Plan of Action for the Elimination of the Worst Forms of Child Labor and can include but are not limited to, mining, CSEC, scavenging/garbage picking, brick making, portering, stone quarrying/breaking, fishing, begging, work in restaurants, hotels, and karaoke bars, and domestic service. A convincing justification must be included for selection of target sectors, and justifications should clearly demonstrate knowledge of existing interventions in those sectors and how the proposed project will build off of or complement existing or past interventions.

In determining provincial targets, Applicants should take into consideration priority areas outlined in the draft National Plan of Action for the Elimination of the Worst Forms of Child Labor, as well as the location of current USDOL-funded activities and ensure that efforts are not duplicated and that efforts/resources are leveraged where possible. At a minimum, Applicants should propose four provinces for project interventions and provide a clear justification for choices. Applicants are encouraged to target populations that are particularly disadvantaged, such as girls.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants should demonstrate a thorough knowledge of ongoing and previously piloted interventions and good practices to eliminate child labor in Cambodia and the Mekong region, at the local, national and regional levels. Proposals should support and/or build upon the efforts of past and existing projects to *withdraw children from*, and *prevent children from entering*, the *worst forms of child labor* in agricultural and other sectors in rural areas; children's involvement in prostitution and begging in urban areas; as well as the trafficking of children for *exploitive labor*, without duplicating ongoing or previous efforts. Interventions and activities should support the government's National Plan of Action for the Elimination of the Worst Forms of Child Labor. At minimum, collaborations should take place with the MOLVT; the Ministry of Social Affairs; Veterans and Youth Rehabilitation (MOSAVY); the Ministry of Education, Youth, and Sport (MOEYS); the National Steering Committee; provincial and local-level government officials; ILO-IPEC; World Education; United Nations agencies and other International Organizations working in Cambodia; the Civil Society Network Against Child Labor; and other NGO's and local groups working on child welfare and social service provision.

3. Implementing Environment/Cross-Cutting Themes

Over the past decade, Cambodia's economic growth has improved, but its history of conflict and resulting negative socio-economic effects have left the country with significant development challenges that must be considered when designing project interventions. Applicants should consider the specific challenges of a lack of basic rural infrastructure; low capacity of civil society and governmental institutions; lack of access to quality and relevant education, especially in rural areas; and the lack of a skilled workforce. In addition, Cambodia is a country of origin, transit, and destination for trafficking in persons. Given children's vulnerability to being trafficked due to lack of economic resources, lack of education, and migration patterns in the region, internal and cross-border trafficking of children should be addressed in the application. However, the primary focus of the project should not be on trafficking; rather, trafficking should be addressed within the overall context or as a project component.

4. Project-Specific Strategies

Applicants must propose a strategy that supports the government's National Plan of Action for the Elimination of the Worst Forms of Child Labor and contributes toward Cambodia's targets for reducing the incidence of the *worst forms of child labor* by 2015. In order to address the inadequacies of the current education system, the proposed strategy should assist in increasing the capacity of the Ministry of Education offices nationally and in target provinces to ensure improved service delivery, increased budgetary commitments and management, and awareness of child labor. Service delivery and management should be further enhanced in both the formal and non-formal system through teacher and administrator trainings and other approaches as proposed by the Applicant. Given the lack of alternatives to formal schooling in rural areas, the Applicant must also design a strategy to assist children who are not able or are unwilling to attend formal school, by providing access to non-formal education and vocational training. If cultural traditions and norms impact decisions about schooling, Applicants must show how education programs would be sensitive and responsive to these traditions, particularly as they relate to girls' education.

Enforcement of existing labor laws is inadequate in Cambodia. To address this issue, Applicants should propose a strategy for increasing the capacity of labor inspectors on enforcement of legal provisions relating to child labor in the formal workplace, and contribute to ongoing efforts to expand legislation to cover children working in the informal sector. This strategy should demonstrate how efforts would be coordinated with, and complementary of, existing efforts of the ILO–IPEC-supported Timebound Program and the government's National Plan of Action for the Elimination of the Worst Forms of Child Labor. In addition, Applicants should design activities to support the government in its review of its current list of hazardous child labor and finalization of the new list, efforts to raise awareness of the list, and improve compliance and enforcement of regulations surrounding the list.

There is a lack of systematic and reliable data on the *unconditional worst forms of child labor* in Cambodia. These forms of child labor are often culturally sensitive and/or illicit, making information difficult to gather. Applicants are encouraged to conduct small-scale research projects and disseminate findings on the *unconditional worst forms of child labor* in Cambodia, especially on products made from *exploitive child labor* or forced labor. This information should also be used in formulating more targeted and coordinated responses.

Project of Support to the Colombia Timebound Program on the Elimination of the Worst Forms of Child Labor

i. Background

In Colombia, 10.4 percent of children ages 5 to 14 years were found working in 2001. The majority of working children were found in the services sector (49.9 percent), followed by agriculture (35.6 percent), and manufacturing (12.6 percent). Approximately 14.1 percent of all boys 5 to 14 were working compared to 6.6 percent of girls in the same age group. Children mine and process emeralds, gold, clay, and coal under dangerous conditions. Some work in aspects of the illegal drug trade, such as harvesting coca. Child labor is also a problem in the informal sector, where children work in agriculture, commerce, industry, and services. Many girls work in domestic service.

Child pornography and commercial sexual exploitation of children (CSEC), including prostitution and sexual tourism, are reported in Cartagena and at resorts on the Caribbean Coast. Colombia is a major source of girls trafficked for the purpose of CSEC. Children are trafficked internally from rural to urban areas for sexual exploitation, and are also trafficked abroad. Children in Colombia are also recruited, sometimes forcibly, by insurgent and paramilitary groups to serve as combatants in the country's ongoing conflict.

ii. Relevant Policies, Programs, and Projects

There are a number of efforts by the Government of Colombia, international organizations, and nongovernmental organizations (NGOs) to address *exploitive child labor.* The Government of Colombia's policy framework to address child labor has been the National Plan for the Elimination of Child Labor and the Protection of Working Youth (2003–2006). The government and other relevant actors are drafting a new national plan, which has not yet been officially approved.

In November of 2006, a new legal framework was put into effect, the Childhood and Adolescence Code, which replaces most all provisions of the 1989 Minor's Code, and includes provisions related to child labor. The 2006 Code establishes the government's obligation to eliminate the *worst forms of child labor.* The Ministry of Social Protection (MSP) is responsible for enforcing child labor laws in the formal sector and protecting adolescent workers authorized by the government to work. Labor can only be performed by those under the legal working age of 14 under special circumstances. Various legal provisions regulate the conditions under which minors may work to ensure that their education is not compromised. Employers must enroll 12 to 17 year olds who have not completed *basic education* in school and allow them sufficient time to pursue their studies. Schools must report cases to authorities in which children are involved in the *worst forms of child labor.* The National Police is also responsible for detecting and investigating these cases.

Other important policy frameworks and legal instruments that address *exploitive child labor* in Colombia include the National Plan of Action for the Prevention and Eradication of Commercial Sexual Exploitation of Boys, Girls, and Adolescents Below 18 Years of Age (2006–2011), and Colombia's Ten-Year Plan for Children (2004–2015). A Ministry of Social Protection Resolution prohibiting children under 18 from certain forms of dangerous work was published in December 2005. In compliance with Colombia's ratification in 2005 of ILO Convention 182 on the Worst Forms of Child Labor, the law prohibits those under age 18 from the *worst forms of child labor.*

The Government of Colombia participates in several programs to eliminate *exploitive child labor* that are funded by international organizations and foreign governments including the United States. These programs include a USDOL-funded project implemented by World Vision to withdraw and prevent children from *exploitive labor* in the municipalities of Funza and Madrid. Colombia also participates in a regional project in four South American countries to withdraw and prevent children from CSEC and child domestic labor, and was part of a global project on child soldiers, both funded by USDOL and implemented by ILO–IPEC. Another ILO–IPEC project, funded by the Canadian government, aims to improve national, regional, and municipal government cooperation to address child labor.

Various Colombian government entities carry out activities related to the elimination of *exploitive child labor.* The Colombian Family Welfare Institute administers programs to provide rehabilitation services to children who have been recruited into armed groups, children engaged in CSEC, and children who live on the streets. The Colombian Institute of Geology and Mining implements a project with the United Nations Development Program to eliminate child labor in the mining sector. Other ministries working in this area are the Ministry of Social Protection, the Ministry of Communication, the Inter-institutional Committee against Trafficking in Persons, and the National Police.

The Government of Colombia supports education and other programs that may indirectly contribute to the elimination of *exploitive child labor.* The Ministry of Education's Policy Guide for Vulnerable Populations includes strategies to address child labor, and the Ministry of Defense distributes educational kits to schools in areas where children are *at-risk* for recruitment into armed groups. Through World Bank loans, the Government of Colombia is working to improve education in rural areas, and funds a ''Families in Action'' conditional cash transfer program to encourage school attendance. The government assists needy families to pay for education costs including books, supplies, transportation, and other fees. The World Food Program and the Colombian government also operate a primary school feeding program. The government participates in, and makes financial contributions to, a project implemented by the International Organization for Migration that provides services to vulnerable groups, including education and job-training for displaced *youth.* This project is funded by the United States Agency for International Development and Italy. All of these programs help to promote the retention of children to grade 5 and beyond, since education is compulsory in Colombia to age 15. As of 2003, however, only 77 percent of students were likely to reach grade 5.

iii. Scope of Work

1. Specific Target Groups, Sectors, and/or Geographic Focus

Applicants should identify target sectors and specific beneficiary groups in line with Colombia's new National Plan for the Elimination of Child Labor and the Protection of Working Youth, with a particular focus on sectors that the government has identified as a priority under a Timebound Program as part of its commitment to implement ILO Convention 182. Applicants may, however, identify other sectors where children are *at-risk* or involved in other *worst forms of child labor,* but must present a compelling reason for such a choice. Since many Colombian children are affected or displaced by conflict, the project should pay special attention to their needs.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants should support Colombia's new National Plan for the Elimination of Child Labor and the Protection of Working Youth and sectors that the government has identified as a priority under a Timebound Program. Since a Timebound Program is complex, in addition to the Ministry of Labor, the project should include coordination with other ministries working in areas related to combating *exploitive child labor* and child protection, including the Ministry of Social Protection, the Ministry of Communication, the Inter-institutional Committee against Trafficking in Persons, the Colombian Family Welfare Institute, and the National Police.

3. Implementing Environment/Cross-Cutting Themes

Colombia has endured more than 35 years of conflict by rival armed groups. This conflict affects the implementing environment in areas such as security and the existence of a high number of internally displaced persons with reduced access to health care, education, or employment. Displaced persons are particularly vulnerable to labor abuse and exploitation, including the *worst forms of child labor.* Armed groups also recruit and use children as soldiers, and there has been a high degree of violence against organized labor. Applicants should consider to what extent these challenges might affect the project's implementation. Project strategies should account for the continued conflict, and the relationship between the armed conflict and *exploitive child labor.* Changes in the political environment, including those at the national, regional, and local level, may also affect project implementation. These changes may be a result of elections or also of changes in policy and personnel in cooperating government agencies. Applicants should design strategies that minimize disruptions when such events occur.

4. Project-Specific Strategies

Applicants must propose approaches that assist Colombia in developing and implementing a Timebound Program to eliminate the *worst forms of child labor.* This program will assist the Government of Colombia in fulfilling its obligations under Articles 1 and 7 of ILO Convention 182. Specifically, the Applicant's strategy should strengthen the capacity of the Colombian government and civil society organizations to take immediate, effective, and timebound measures to: (a) Prevent the engagement of children in the *worst forms of child labor;* (b) provide the necessary and appropriate direct assistance for the *withdrawal of children from the worst forms of child labor* and for their rehabilitation and social integration; (c) ensure access to free *basic education,* and, wherever possible and appropriate, vocational training, for all children removed from the *worst forms of child labor*; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls. In support of a Timebound Program to Eliminate the Worst Forms of Child Labor, the Applicant's proposal must focus both on *withdrawing and preventing children from exploitive child labor* through the provision of *direct educational services,* as well as *improving country capacity to address child labor,* including the policies and capacities of relevant government and civil society institutions. Timebound Programs to Eliminate the Worst Forms of Child Labor have been implemented in several countries around the world. Lessons learned from these Timebound Programs should be used to improve the design of a Timebound Program in Colombia.

Applicants must also propose a strategy to strengthen the ability of Colombian government and civil society organizations to improve relevant policies and institutional capacity to eliminate the *worst forms of child labor.* In addition, Applicants should seek to strengthen the capacity for inter-institutional coordination given that the complexity of child labor issues requires the collaboration of many public and private institutions in what are currently often disparate programs. Applicants' proposals should clearly identify the institutions with which they intend to conduct capacity-building activities; each organization's specific role in relation to the project's strategy of support to the Timebound Program; the expected result of technical assistance to be provided by the Applicant; and the means through which the organizations will receive technical assistance (i.e., specified number of trainings or consultancies). These efforts could involve building organizational capacity in the following areas: To *withdraw children from,* and *prevent children from entering, exploitive child labor;* to plan, implement, and monitor activities to eliminate *exploitive child labor;* and to identify and effectively respond to cases of the *worst forms of child labor*. They could also include improvements to laws and law enforcement in an environment of constrained resources and ongoing armed conflict; to education policies; to quality of service provision to children and social support for families; and to awareness raising. Applicants should identify how the project will productively engage existing institutions such as Inter-institutional Committee for the Eradication of Child Labor and the Protection of Young Workers and the Inter-institutional Committee against Trafficking in Persons in the intervention area(s) to ensure that project goals will be met and project efforts will become sustainable.

In their proposed strategy, Applicants should demonstrate a thorough knowledge of previous and on-going interventions and good practices to eliminate child labor in Colombia, including those funded by USDOL, those occurring as part of National Plans for the Elimination of Child Labor and the Protection of Working Youth, and the National Plan of Action for the Prevention and Eradication of Commercial Sexual Exploitation of Boys, Girls, and Adolescents Less than 18 Years of age. The proposal should build upon the efforts of past and current efforts to *withdraw* and *prevent* children from engaging in *exploitive labor.* Education strategies should take into account successful existing Colombian educational programs including Accelerated Learning and New Schools (Escuela Nueva). When appropriate, Applicants should identify intervention strategies that link *direct beneficiaries* to these educational services.

Promoting Education and Appropriate Youth Employment in the Dominican Republic Through Public-Private Partnerships

i. Background

An economic crisis in 2003 led to increased poverty rates throughout the Dominican Republic, which has disproportionately affected the poorest segments of society, including children and *youth.* In 2000, approximately 14.5 percent of children between the ages of 5 and 14 years were working in the country, as compared to 5.9 percent in Costa Rica, 9.2 percent in Honduras, 10.2 percent in El Salvador, 10.9 percent in Nicaragua, and 16.1 percent in Guatemala. In the Dominican Republic, approximately 21.6 percent were boys ages 5 to 14 were working as compared to 7.3 percent of girls in the same age group. The Government of the Dominican Republic estimates that 41 percent of working children ages 5 to 17 work in services, 21 percent in commerce, 19 percent in agriculture, and 11 percent in manufacturing industries. Most work performed by children takes place in the informal sector. In urban areas children work in the streets, markets, garbage dumps, and repair shops. They wash cars, shine shoes, and carry heavy loads. Many urban child workers are migrants from other regions. Children also work as domestic servants in third-party homes. In rural areas, children work mostly in agriculture and services, and most child agricultural workers are boys. Haitian and Dominican children plant and cut sugar cane. Child labor has been found to be a problem in Haitian sugar cane worker villages, or ''bateyes'' that lack basic services such as water, electricity, and schools.

The Dominican Republic is also a source, transit, and destination country for children trafficked for the purposes of commercial sexual exploitation (CSEC) and forced labor. Children are trafficked internally from rural to urban and tourist areas where CSEC is a problem, especially in Boca Chica, Puerto Plata, and Sosúa. Haitian children are trafficked to the Dominican Republic for work in the streets, in agriculture, and also for the purpose of CSEC. Children, particularly Haitian children, are sometimes ''adopted'' by families who register the child as their own and provide some form of payment to the birthparents. Such children are often exploited as domestic workers or as workers in family businesses.

Although education is free and compulsory to age 14, nearly half of all Dominican children do not complete school through the primary level, and at the secondary level, 50 percent of students are over age, and up to 20 percent are 3 or more years behind their cohorts. High repetition rates contribute to school abandonment and, in rural areas, barely 50 percent of schools go beyond the fourth grade. More than 50 percent of rural schools operate on a multi-grade system.

The Government of the Dominican Republic defines ''*youth*'' as individuals between the ages of 15 and 35 years. Article 15 of the General Youth Law focuses on promoting the successful integration of *youth* into the job market and the Ministry of *youth*, under the direction of the Administrative Secretariat of the Presidency, works to promote the development and societal integration of Dominican *youth* to allow them to contribute to national welfare. The economic crisis has contributed to increased school drop-out rates, an increase in the number of *youth* who resort to crime, violence, and gang activity, and high rates of *youth* under- and unemployment. The unemployment rate for *youth* ages 15 through 24 years is 31 percent, nearly double that of the average population (17 percent). Many adolescents of legal working age (14 years) with low school attainment and few marketable skills find work in the informal sector and work under hazardous conditions, receiving much lower pay than work in the formal sector would offer.

In addition, the traditional vocational and skills training institutions have only been partially accessible to low-skilled *youth* with low levels of education, and a significant number of *youth* who do not have official identity documentation are not allowed to participate in national training programs. Many of these *youth* lack the information necessary to help them obtain the required documentation.

ii. Relevant Policies, Programs, and Projects

In 2005, the Dominican Congress signed the Central American Free Trade Agreement (CAFTA) which commits the government to labor provisions, including the elimination of the *worst forms of child labor*. In 2006, the government launched a National Plan to Eliminate the Worst Forms of Child Labor (2006–2016). The Secretariat of Labor (SET), in coordination with the National Council for Children and Adolescents (CONANI), is responsible for protecting minors against labor exploitation. The SET operates provincial and municipal committees on child labor. The government has been working to increase its efforts to protect children from *exploitive child* *labor*, such as by making monthly labor inspections to sugar cane worker villages. It has effectively enforced child labor laws in the formal sector; however, has been less successful in the informal sector. Also, the legal requirement that CONANI receive a minimum of two percent of the national budget is not being met.

Dominican law sets the minimum age for employment at 14 years and provides guidelines for *acceptable work* practices for minors between the ages of 14 and 18. Employers of minors are required to pay them at least the legal minimum wage. Fines have been established for violations of legal provisions involving child labor. National laws establish penalties of imprisonment and fines for assisting in or the trafficking of minors for the purposes of forced labor; CSEC, including prostitution and pornography, or other degrading activities in exchange for compensation; and the making, distributing, or publishing of pornographic photographs of children is also punishable by incarceration and fines. Laws are also in place that prohibit forced labor and the use of children in drug trafficking.

The government is implementing an Action Plan for the Eradication of Abuse and Commercial Sexual Exploitation of Boys, Girls, and Adolescents. The Armed Forces provides educational and recreational programs for working and *at-risk* children and runs a shelter for such children. The government also supports several child labor, trafficking, and CSEC awareness campaigns, workshops, and trainings, and provides funding to nongovernmental organizations (NGOs) that work with trafficking victims. The anti-trafficking unit of the Office of the Attorney General investigates and prosecutes trafficking crimes. The government has shut down several businesses involved with CSEC, rescued children, and obtained related convictions. However, according to the U.S. Department of State, the Dominican Republic lacks effective trafficking law enforcement and victim protection programs, due in part to a lack of resources. The border with Haiti is not sufficiently monitored, according to the U.S. Department of State. The Technical Institute for Professional Development provides training to individuals who have been trafficked and to children at risk of being trafficked, especially those in the Boca Chica area. The Tourism Police provides counseling services to abused children, including trafficked children. CONANI operates a referral center for children in Boca Chica who have been involved in CSEC, and runs seven shelters for children.

The Government of the Dominican Republic also supports education and other programs that may indirectly contribute to children's withdrawal from, or prevention from entering, *exploitive labor*. In 2005, the government developed an inter-ministerial social sector policy that focuses resources for the poor. The Secretariat of Education (SEE) provides some stipends for poor families who keep their children in school and out of exploitive work. A World Bank USD 23 million loan will be used to expand a SET program that provides job training and internships to individuals age 16 and above, as well as to expand an SEE program that provides school deserters with the opportunity to complete their education.

Several projects funded by USDOL have supported the government's Timebound Program to eliminate the *worst forms of child labor* and were designed to remove or prevent over 22,000 children from exploitive work in agriculture, urban work, CSEC, and trafficking. These projects, implemented by the ILO-IPEC and DevTech Systems, Inc., have several interesting components that include the development of a community-based *child labor monitoring system (CLMS)* and the engagement of the academic and business sectors, including the Dominican foundation EDUCA (previously the recipient of USAID assistance to develop business-education partnerships). These efforts aim to combat child labor and promote better educational opportunities for children involved in child labor. The Office of the First Lady also administers a program to provide income generating opportunities to families of children *at-risk* for CSEC, including beneficiaries of ILO-implemented projects. The government has participated in a USDOL-funded regional project implemented by ILO-IPEC to eliminate CSEC and hazardous agricultural child labor in Central America and the Dominican Republic, and a USDOL-funded regional project implemented by CARE to strengthen government and civil society's capacity to address the educational needs of working children, and improve the quality of, and access to, *basic education.*

iii. Scope of Work

Applicants will design a project strategy that involves social partners such as, but not limited to, employers, industry organizations, worker organization, NGOs, community-based organizations (CBOs), and academia, to combat *exploitive child labor* and improve education for children engaged in, or *at-risk* of entering, *exploitive labor*. The project should take into account the socio-economic conditions in the Dominican Republic that include inter-generational poverty; early school desertion, and premature employment by children in the non-formal labor sectors, including in the *worst forms of child labor*; and under- or unemployment of youth in the formal sectors of the economy.

1. Specific Target Groups, Sectors, and/or Geographic Focus

The project should target children engaged in, or *at-risk* of entering, *exploitive child labor*, including the *worst forms of child labor*, and taking into account the priorities identified by the Government of the Dominican Republic in its 2006 National Plan to Eliminate the worst forms of child labor. Applicants will identify priority geographical areas and primary target groups of children: (1) Children under age 14, and (2) *youth* between the ages of 14 and up to 18. Applicants will design different but complementary programs for each target group, providing equal opportunities for both males and females. Each program's design should be developed in part by those who will benefit from its services in the targeted regions.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

The project should support the Dominican Republic's National Plan to Eliminate the worst forms of child labor and build upon other USDOL-funded efforts and projects supporting the Dominican Republic's Timebound Program to Eliminate the worst forms of child labor. It should build links with Secretariat of Education programs to improve the quality of *basic education.* It should also coordinate with the World Bank-financed *youth* job training and internship project, taking into account the spirit and provisions of the country's General Youth Law. The project's job/vocational training component targeted to the older age group should support national policies, but should also be adapted to the specific characteristics of the project's regions.

3. Implementing Environment/Cross-Cutting Themes

Exploitive child labor in the Dominican Republic is both a consequence and cause of recurring poverty, which is exacerbated by a low-quality education system. While the rate of child labor for children under 15 is higher in the Dominican Republic than in Central America, the unemployment rate for individuals ages 15 through 24 years is 31 percent, nearly double that of the average population (17 percent). Thus, paradoxically, premature child labor and school desertion, and high ''*youth*'' unemployment represent two sides of the same coin; the challenge of overcoming economic and social inequalities and of accessing high quality education and employment opportunities.

In addition, the traditional vocational and skills training institutions have only been partially accessible to low-skilled ''*youth*'' with low levels of education. National training programs also have not necessarily taken into account the specific social and productive contexts in which the knowledge transferred would be applied. The country's opening up to trade and flow of people migrating and returning provide many opportunities to make reforms. The country also has an engaged business and academic sector eager to address these challenges, and is ripe for the development of such social partnerships.

4. Project-Specific Strategies

This project should focus on strengthening sustainable networks, consortiums, or working groups composed of both public and private sector entities in order to implement actions to eliminate *exploitive child labor* in the Dominican Republic. These actions should also promote educational and training opportunities, particularly those leading to improved future employability for *youth* in jobs that are more likely to combat the cycle of poverty that often results in *exploitive child labor.* The project should pay special attention to promoting corporate social responsibility, developing codes of conduct in specific sectors targeted (e.g., agriculture, tourism, or other proposed sectors of project focus), and expanding the emerging role of the business sector in combating *exploitive child labor*.

Applicants should propose demonstration projects that develop partnerships with social partners such as, but not limited to, the following: employers, industry organizations, worker organization, NGOs, CBOs, and academia to (1) improve the quality of *basic education* for target children under age 14, and (2) enhance educational, vocational and job training and job placement opportunities for target *youth* between the ages of 14 and up to 18 years. Each of the two demonstration projects should forge links between education and practical experience, and promote leadership, entrepreneurship, and citizenship relevant to the Dominican context.

Activities of these partnerships may include, but are not limited to, the following: action research designed to inform demonstration projects and proposed policies that would benefit children involved in *exploitive child labor* in the Dominican Republic. These activities would center on expanding awareness of public and private sector entities regarding *exploitive child labor*, improving coordination between the public and private sector to combat *exploitive child labor*, and the adoption of policies and practices by both public and private organizations to improve educational and employment opportunities for *youth* that have low income and low levels of schooling, no technical training, and work experience only in *exploitive child labor*.

The project may also focus on increasing the number and quality of individual private sector initiatives to eliminate and prevent *exploitive child labor*. Examples of these types of initiatives include the provision of *direct educational services* to children, the adoption of policies or development of innovative initiatives by programs by private sector organizations to combat or monitor *exploitive child labor*, and the development of private sector mechanisms to detect and respond to cases of *exploitive child labor*.

Preventing *Exploitive Child Labor* and Reintegrating War-Affected Children in the Democratic Republic of the Congo

i. Background

The Democratic Republic of the Congo (DRC) concluded a brutal civil war in 2003 that lasted 5 years and took the lives of nearly 4 million people. In 2006, for the first time in more than 40 years, the government held parliamentary and presidential elections. Despite these achievements, armed groups operate outside of the government's control, and fighting continues in different regions of the country, particularly in Ituri District, North and South Kivu, and northern Katanga. Violent conflict, widespread poverty, and a lack of basic services contribute to the exploitation of children.

In the DRC, children work in the informal sector and in subsistence agriculture, which constitute the largest parts of the economy. Some parents make their children hunt, fish, engage in prostitution, or beg in the streets to support their families instead of attending school. Children also work in the extraction of natural resources. In Katanga province, children reportedly dig holes and wash, sift, and transport minerals to pay school fees and support their families. While recent child labor statistics are unavailable, the Understanding Children's Work (UCW) Project, an interagency collaboration among the ILO, UNICEF, and World Bank, estimates that approximately 39.8 percent of children ages 5–14 years were found working in 2000. At the height of the 5-year civil war, an estimated 30,000 children were fighting or living with armed groups. While there are no official statistics, reports indicate that 3,000 to 11,000 children still need to be demobilized. Amnesty International (AI) notes that, while girls represent 40 percent of child soldiers, they only represent two percent of the children released by armed groups in some areas of the country. According to AI, this discrepancy has occurred because service providers falsely assume that female child soldiers are the ''wives'' of adult fighters. Armed groups in the DRC continue to abduct and recruit children to support violent conflict. Children associated with armed groups are used as combatants, laborers, and sexual slaves or forced to mine natural resources. Many children remain vulnerable to recruitment or re-recruitment due to a lack of economic alternatives and inadequate community support.

Children are trafficked within the DRC for forced labor and sexual exploitation. Most trafficking occurs within the eastern provinces of the country where government control is weak and armed groups continue to abduct and forcibly recruit children.

In October 2005, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that 1.6 million people remained displaced due to violence and instability. According to UNICEF, displaced children are frequently separated from their parents, removed from school, and exposed to disease and malnutrition.

The HIV/AIDS epidemic is a significant problem in the DRC for all children and their families. According to UNAIDS, there are approximately 120,000 children living with HIV/AIDS and an estimated 680,000 children who have been orphaned by AIDS in the DRC. The HIV/AIDS prevalence rate ranges from 1.7 to 7.6 percent, but it is thought to be as high as 20 percent among women in conflict areas due to widespread sexual abuse and violence.

ii. Relevant Policies, Programs, and Projects

There are a number of current efforts by the Government of the Democratic Republic of the Congo, international organizations, and NGOs to combat *exploitive child labor*, including child soldiering, and address the country's lack of resources. With the support of the World Bank, the government is implementing a national plan for the disarmament, demobilization and reintegration (DDR) of adult and child ex-combatants. In 2006, the government created a national committee to combat the *worst forms of child labor*, adopted the National Plan for the Protection of Children, and finalized a poverty reduction strategy paper that addresses the problem of child labor. In collaboration with UN agencies, the World Bank, the European Commission, and other donors, the government also finalized a Country Assistance Framework (CAF) to coordinate strategies for the reform, reconstruction, and development in the DRC from 2007 to 2010.

The government participates in a 4-year, global project, funded by USDOL and implemented by ILO–IPEC to reintegrate war-affected children. Ending in May 2007, this project aimed to withdraw 2,000 children and prevent another 2,000 children in the DRC from child soldiering and other forms of *exploitive labor.* With government support, UNICEF disarms and reintegrates child soldiers, rehabilitates classrooms, trains teachers, and distributes school supplies. USAID promotes community infrastructure projects and micro-credit schemes to facilitate the reintegration of ex-combatants. USAID is also partnering with select international mining firms to reduce the number of child miners in Katanga province.

The Ministry of Labor is responsible for implementing and enforcing child labor laws and regulations. The law provides for legal sanctions against employers who actively recruit children under the age of 15, and employers who are found employing children under 15 may be punished with a fine. Legal remedies to enforce child labor laws include criminal penalties, civil fines, and withdrawal or suspension of one or more civil, national, or family rights, including denial of legal residence in the country for a period of 5 to 10 years. The law also enables inspectors and the police to bring charges against employers of children under age 15 in all sectors, including apprenticed children and family businesses.

iii. Scope of Work

Applicants must take into account cross-cutting themes (discussed below) that could affect project results in the DRC and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation. In the DRC, specific considerations for project strategies and program activities should include the following components:

1. Specific Target Groups, Sectors, and/or Geographic Focus

The proposal should target children who are engaged in *exploitive child labor*, with a focus on children who have been affected by armed conflict. Applicants are encouraged to include war-affected children compelled to work in mining, mining-related activities, or *exploitive labor* in mining areas as a target group of the project. Applicants are also encouraged to identify target other groups for intervention, but must provide convincing reasons as to why they merit funding.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants must demonstrate that the proposed project activities support the National Plan for DDR and the National Plan for the Protection of Children, and complement existing policies and programs that address the underlying causes of poverty. At a minimum, collaborations should take place with the Ministry of Labor and Social Security; the Ministry of Primary, Secondary, and Professional Education; the Ministry of Mines; the National Commission for Disarmament, Demobilization and Reintegration; ILO–IPEC; and UNICEF. Applicants must also demonstrate that the project will work collaboratively with local, regional, and national institutions and organizations already engaged in addressing *exploitive child labor* and education issues in the DRC. Applicants should also support the efforts begun under the USDOL-funded, ILO–IPEC Child Soldiers project to *withdraw children from*, and *prevent them from entering, exploitive labor* in the DRC. In addition, the project should also collaborate and coordinate with the projects reintegrating ex-child combatants being implemented by USAID and UNICEF, as well as the USAID-funded mining project in Katanga province.

3. Implementing Environment/Cross-Cutting Themes

USDOL seeks to fund a sustainable project that provides for the emerging educational needs of war-affected children *at-risk* of, or engaged in, *exploitive child labor* in the DRC as the country demobilizes. Applicants should take into consideration the fluidity and constantly changing nature of the security situation in the DRC and related migrations flows. Applicants must also address the cross-cutting theme of HIV/AIDS.

4. Project-Specific Strategies

In developing the project strategy, Applicants must provide a definition of ''war-affected children'' that will be used in identifying potential *direct beneficiaries* under the project and should account for the demographic and social characteristics of such children and *youth.* Applicants should keep in mind interventions for *hazardous work*, particularly for children between 15 and up to 18 years who meet the minimum age requirements for work. If Applicants propose to target children working in agriculture, they must demonstrate knowledge of injury prevention strategies for children who continue to work under the supervision of their parents. In addition, Applicants should incorporate HIV/AIDS awareness activities into their proposed strategy to *withdraw children from*, and *prevent them from entering, exploitive labor.*

Project of Support to the Indonesian Timebound Program on the Elimination of the *Worst Forms of Child Labor*

i. Background

Indonesia is the world's fourth most populous country, with an approximate population of 245 million, and has the world's largest Islamic population. Indonesia's economy is still recovering from the effects of the 1997–98 Asian financial crisis and the December 2004 earthquake and tsunami, but has regained macroeconomic stability and is achieving modest progress in pursuing poverty reduction and growth strategies. Major development challenges include improving access, efficiency, and quality in the delivery of education and basic social services; strengthening democratic reform after the country's first direct Presidential elections in 2004; increasing the capacity and resources of recently decentralized government agencies; and accelerating employment opportunities for the estimated 2.5 million new entrants into the workforce each year. In addition, Indonesia continues to battle periodic natural disasters, such as the 2004 earthquake and tsunami.

Key to accomplishing Indonesia's development goals will be to remove and prevent children from the *worst forms of child labor.* Based on a review of available survey information, in 2002 the ILO estimated that 7.5 percent of children age 10 to 14 years, or 1.6 million children, were working in Indonesia. It was also estimated that 3.4 million children age 15–17 were working, for a total of 4.87 million working children in the country. In both age groups, boys represented approximately 60 percent of working children, while girls represented 40 percent. Localized studies and unofficial estimates put the number of working children much higher.

The majority of child work in Indonesia occurs in rural areas. Children work under hazardous conditions in agriculture on palm oil, cacao, tobacco, and sugar plantations. Children also work in fishing, construction, manufacturing, footwear production, food processing, and the small-scale mining sector. Other children work in the informal sector selling newspapers, shining shoes, street vending, scavenging, and working beside their parents in family businesses or cottage industries. There are also large numbers of street children in urban centers. Children, primarily females, are also exploited in domestic service, often under conditions resembling forced labor. Within Indonesia, girls typically enter domestic service between the ages of 12 and 15 and typically work 14 to 18 hours a day, 7 days a week. They do not have access to education, and often employers forbid them from leaving their workplaces or withhold their wages. In addition, in an attempt to migrate to Malaysia and the Middle East to work as domestic servants, many girls end up being trafficked or exploited in a system of debt bondage by traffickers and recruiting agencies. Easy access to illegal documents and poor regulation of employment recruiting agencies exacerbate the problem.

Indonesia is a source, transit, and destination country for individuals trafficked internationally and internally, including children. Children, primarily girls, are trafficked both internally and internationally for commercial sexual exploitation (CSEC) and domestic service. There are also increasing reports of children being trafficked to work in organized begging rings. In addition, children are exploited in the production of pornography and in the international sex industry. Children are also known to be involved in the production, trafficking, and/or sale of drugs. Indonesia's decentralization policy has placed primary responsibility for provision of education services at the district level. This has contributed to the decline in education standards, especially at the secondary levels, as district governments are ill-prepared to manage the decentralized education systems. There are shortages of teachers in many areas, existing teachers are often poorly trained, and school curricula do not include relevant vocational training. Public funding for education in Indonesia is one of the lowest in South East Asia. By law, education is compulsory and free for nine years in Indonesia. Children are required to attend school until age 15. The law provides for government provision of education services, but also stipulates that families are expected to provide financial contributions supporting educational programs, with the exception of children meeting the ''impoverished'' guidelines determined by district regulations. For both the impoverished children who receive a government education subsidy and the other children, the additional fees and informal levies, plus the cost of books and uniforms, are often more than families can afford. In addition, transportation costs are many times prohibitive for poor families. USAID estimates that only 40 percent of children who enroll in primary school complete 9 years of *basic education.* The lack of access to schools beyond the primary level contributes to low transition rates to, and high drop-out rates from, junior secondary schools. Children, especially girls, in this grade level and age group are particularly vulnerable to dropping out of school and entering the *worst forms of child labor.* For children who drop out of school, the re-entry to the formal school system can be difficult due to the psychological and emotional trauma that children involved in the *worst forms of child labor* have suffered.

ii. Relevant Policies, Programs, and Projects

There are a number of current efforts by the Government of Indonesia, international organizations, and NGOs to address *exploitive child labor* in Indonesia and also the underlying causes of poverty and lack of resources. Recent reform efforts and statements by the government reflect an increased willingness to openly acknowledge and fiscally support programs to tackle child labor. The government is in the process of completing its first phase of activities under its 20-year National Plan of Action to Eliminate the Worst Forms of Child Labor, which focuses on five sectors including fishing, mining, footwear production, trafficking, and the drug trade. The government, coordinated through the National Steering Committee on Child Labor, is reviewing progress of the National Plan of Action to Eliminate the Worst Forms of Child Labor to identify priority sectors and activities for the second phase. The State Planning Board, with support from the World Bank, is currently piloting a Conditional Cash Transfer program in six provinces with reduction of child labor as one of the targets for the program. The National Plan of Action to Combat the Trafficking of Women and Children and the National Plan of Action to Combat Commercial Sexual Exploitation are in place, aimed at reducing child trafficking and CSEC. In addition, the Government of Indonesia has incorporated eliminating child labor into its national development policy, including child labor-specific targets and goals in its National Medium Term Development Plan (2004–2009), the Poverty Reduction Strategy (2005–2009), and the National Plan of Action of Human Rights in Indonesia (2004–2009).

The law sets the minimum age for work at 15. Employing and involving children under the age of 18 in the *worst forms of child labor* are prohibited under the law and failure to comply can result in criminal sanctions of two to five years imprisonment. The law defines the *worst forms of child labor* as slavery; use of children in prostitution, pornography and gambling; use of children for alcohol, narcotic, and addictive substance production and trade; and all types of work harmful to the health, safety and morals of the child. The law identifies a list of such harmful activities and provides detailed descriptions and examples of these activities, including jobs requiring children to work with machines; jobs where physical, chemical, or biological hazards are present; jobs with inherent hazards such as construction, offshore fishing, and lifting heavy loads; and jobs that harm the morals of the child including in bars, massage parlors, discotheques, or in the promotion of alcohol or drugs. The law contains an exception for employing children ages 13 to 15 years in light work that does not harm their physical, mental, and social development. A set of requirements is outlined for employment of children in this age range, including a maximum of three hours of work per day, parental permission, and no disruption of schooling.

Additional legal sanctions are laid out for the offenses of CSEC, child trafficking, involving children in the production or distribution of alcohol or narcotics, and involving children in armed conflict. A newly passed anti-trafficking bill criminalizes all types of human trafficking domestically and internationally, prescribes harsh penalties for violators of the bill, and mandates victim services and compensation.

The Government of Indonesia is participating in a USD 4.1 million USDOL-funded ILO–IPEC project in support of the National Plan of Action to Eliminate the Worst Forms of Child Labor and Timebound Program to progressively eliminate the *worst forms of child labor*, as well as a USD 1.4 million addendum to address vulnerable children in tsunami-stricken areas. In support of the national Timebound Program, USDOL also funds a USD 6 million Child Labor Education Initiative project implemented by Save the Children to combat child trafficking in Indonesia, and a USD 2.5 million project implemented by Save the Children to prevent children from entering *exploitive labor* in tsunami-affected areas. In 2006, the Government of Indonesia also participated in a regional USDOL-funded anti-trafficking project and a regional awareness-raising project to eliminate the *worst forms of child labor.* In addition, in 2006 a Netherlands-supported USD 1.2 million project to eliminate exploitive child domestic work in Indonesia and 7 other countries in the region was completed. Sweden continues to support a project on child labor and *youth* employment in Indonesia, Pakistan, Tanzania, Egypt, and Guatemala.

iii. Scope of Work

Applicants must propose a creative and innovative approach to address the challenges of educating and assisting children engaged in, or *at-risk* of entering, the *worst forms of child labor.* Strategies must be in alignment with the government's current efforts to design and implement the second phase of its National Plan of Action to Eliminate the Worst Forms of Child Labor, and must also build on efforts initiated under the first phase. Applicants must demonstrate knowledge of Phase I National Plan of Action to Eliminate the Worst Forms of Child Labor activities and, where applicable, propose strategies to continue or build off those efforts. Applicants must take into account cross-cutting themes (discussed below), specific considerations, and additional activities that could affect project results in Indonesia, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce obstacles to successful implementation.

1. Specific Target Groups, Sectors, and/or Geographic Focus

Proposed *direct beneficiaries* should be children working in sectors identified by the government as priority areas within Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor. Applicants do not need to propose *direct beneficiaries* for all sectors identified in the National Plan of Action to Eliminate the Worst Forms of Child Labor, but at a minimum, children working in domestic service, on plantations, and trafficked for CSEC should be included in the project's target groups. Applicants should also propose strategies for assisting urban street children, as a high risk group for trafficking and involvement in the drug trade. Applicants may identify other sectors where children are engaged in, or *at-risk* of engaging in other *worst forms of child labor*, but should present a compelling reason for this choice. Geographic target areas should also be consistent with Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor and take into account previous activities or new areas that need urgent attention. Given the recent humanitarian assistance needs as a result of the natural disasters on Java and Sumatra islands, Applicants may choose to focus on child labor issues that already existed or may have been exacerbated in these areas.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants should support the Government of Indonesia's Timebound Program to Eliminate the Worst Forms of Child Labor and its efforts under Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor. In particular, at the national level, close collaboration with the National Action Committee on Child Labor, chaired by the Ministry of Manpower and Transmigration, is necessary. Since a Timebound Program is complex, in addition to the Ministry of Manpower, the project should include other ministries working in the area of child labor and protection including, but not limited to, the following: The Ministry of National Education, Ministry of Social Affairs, Ministry of Health, Ministry for Women's Empowerment, the National Development Planning Agency (BAPPENAS), and the National Police. Applicants should also collaborate with other national and international institutions carrying out child labor projects including ILO–IPEC, Save the Children, IOM, and UNICEF. Additionally, due to Indonesia's policy of decentralization, strong collaboration with relevant ministries and action committees at the provincial and district levels is imperative. Applicants should also be involved in the government's efforts to implement the Conditional Cash Transfer program. If working in areas of the recent natural disaster, Applicants should coordinate with other donors providing assistance, and complement rather than duplicate existing efforts. Applicants are also encouraged to demonstrate how their organization's previous efforts to combat child labor or promote education have led to the mainstreaming and sustainability of project initiatives.

3. Implementing Environment/Cross-Cutting Themes

Since the late 1990's, Indonesia has undergone recurrent political and economic unrest and instability, which has an impact on overall country development. The country held its first direct presidential elections in 2004 and recently, the government has committed itself to political, economic and social transformations. The country is engaged in debate on development themes including education reform; economic growth and employment creation; good governance and democracy; and continued strengthening of decentralization. Policy decisions in these areas directly affect many of the factors that lead children to enter *exploitive child labor.* Indonesia is the world's largest Muslim country and while the government is secular, religious traditions, organizations and institutions play an important part in the cultural, political, and societal environment in Indonesia. In addition to Islam, there are a multitude of minority religions and ethnic groups existing within the country and in some areas, there are inter-religious/ethnic conflict and tension.

Furthermore, over the past 3 years, Indonesia has been plagued by a series of large-scale natural disasters in both rural and urban areas, including the December 2004 tsunami, the May 2006 earthquake in central Java, the 2007 earthquake in Yogyakarta and flooding in Jakarta, as well as a series of more localized, small-scale disasters. Indonesia continues to be at high risk for future natural disasters due to its location and geography. The past disasters have caused extreme damage or destruction of houses, livelihood equipment, crops, roads and other basic infrastructure including schools. Due to families' loss of income, destruction of homes, and deprivation of education opportunities, children in disaster-stricken areas are more vulnerable and *at-risk* of entering the *worst forms of child labor.* Applicants should consider how the above factors of political and economic instability, religion, and natural disasters might affect the project in the geographic areas where the project would be implemented. Applicants should propose a design that would contribute to lessening the effect of macro level instability, minimize disruptions when such events occur, and address responses in any project sites affected by disaster.

4. Project-Specific Strategies

Applicants must propose a strategy to assist the Government of Indonesia to implement Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor to eliminate the *worst forms of child labor.* Specifically, the Applicant's strategy should strengthen the capacity of the Indonesian government, civil society, employers, and trade unions to take immediate, effective, and time-bound measures to: (a) Provide the necessary and appropriate direct assistance for the *withdrawal* of children from the *worst forms of child labor* and for their rehabilitation and social integration; (b) provide the necessary and appropriate direct assistance for *prevention* of the *worst forms of child labor*; (c) ensure access to free *basic education*, and, wherever possible and appropriate, to non-formal and vocational training, for all children *withdrawn from*, or *at-risk* of entering, *exploitive child labor*; (d) identify and reach out to children at special risk; (e) improve design and implementation of relevant policies and programs to *exploitive child labor*; and (f) raise awareness on the dangers of *exploitive child labor* and the importance of education.

In addition to prioritizing provision of *direct educational services* to children engaged in, and *at-risk* of entering, *exploitive child labor,* the proposed strategy should have a strong focus on upstream policy-level work, supporting the appropriate government and non-government agencies in implementing Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor. Applicants must demonstrate their existing linkages and relationships with the relevant agencies and organizations, or demonstrate how these linkages will be quickly formed, to ensure a smooth transition of activities from Phase I to Phase II of the National Plan of Action to Eliminate the Worst Forms of Child Labor. Specific proposed activities can include, but are not limited to, the following: technical support and guidance to the National Action Committee on the elimination of the *worst forms of child labor;* support in the formation and functioning of provincial and district action committees on the elimination of the *worst forms of child labor;* assistance in raising awareness on and implementing the provisions of the new anti-trafficking bill as it relates to children; developing legislation and policy related to child domestic workers; technical assistance in data collection and mapping of *worst forms of child labor;* development of a national or provincial level *child labor monitoring system (CLMS);* increased coordination and involvement of civil society, employers, and trade unions with government efforts to eliminate *exploitive child labor;* capacity building for labor inspectors and law enforcement to improve enforcement of existing law and regulations on child labor; and technical guidance to BAPPENAS as it undertakes the implementation of the conditional cash transfer program to ensure continued attention to child labor concerns.

The lingering effects of the financial crisis and decentralization of education services have caused deterioration in the education system. The proposed strategy should increase the capacity of the local Ministry of Education offices in target district and provinces to ensure improved service delivery, increased budgetary commitments and management, and awareness of *exploitive child labor.* Service delivery and management should be further enhanced in both the formal and non-formal system through teacher and administrator trainings and other approaches. Applicants must also develop a strategy that will improve the relevance of, and access to, education, especially at the junior secondary levels. Applicants must also design a strategy to assist child laborers who are unable or unwilling to attend formal school, by providing access to non-formal education and vocational training through community learning centers or other appropriate service providers.

Applicants should exhibit an understanding of existing efforts to promote *youth* employment in Indonesia and in the South East Asia region and design interventions to support public/private partnerships to promote job training programs and *youth* employment for children of legal working age. Applicants are encouraged to propose interventions to increase vocational training opportunities for *youth* and support alternative income generating activities for parents to reduce their reliance on their children's labor to supplement family income and to encourage school enrollment. Where such programs already exist and are functioning, Applicants are encouraged to demonstrate existing linkages to implementing agencies and to propose strategies for collaboration and coordination of efforts.

Migration of families and individual children for work in Malaysia and the Middle East, as well as within Indonesia, has led to increased levels of child trafficking, debt bondage and other forms of forced labor, and vulnerability to additional types of exploitation. Lack of access to education, non-relevant and low quality curriculum content, lack of employment opportunities, poor regulation of employment recruiting agencies, and easy access to false passports and identity papers have all exacerbated this phenomenon and increased children's vulnerability for ending up exploited by the *worst forms of child labor.* The proposed project strategy should incorporate this phenomenon into its education services design, as well as propose activities to increase awareness on safe migration and reduce the risk of being trafficked.

Applicants are encouraged to work with the government to improve labor data collection to include child labor, as well as conduct rapid assessments and disseminate findings on *exploitive child labor* in Indonesia, especially in sectors identified by the National Plan of Action to Eliminate the Worst Forms of Child Labor and where data has not been systematically collected and is lacking. In sectors selected for research, attention should be given to the characteristics of *hazardous work* in each selected sector, steps to reduce or eliminate the hazards, and recommendations for government action.

Combating the *Worst Forms of Child Labor* in Morocco

i. Background

Morocco continues to face a variety of challenges as it seeks to improve education and basic social services, provide economic opportunities for its citizens in both rural and urban areas, and incorporate its large *youth* population into educational systems and the job market. While recent statistics are unavailable, the Understanding Children's Work (UCW)

Project, an interagency collaboration among the ILO, UNICEF, and World Bank, estimates that approximately 13 percent of children ages 7–14 years were found working in 1998–1999. Children are found working in a variety of sectors, including agriculture, manufacturing, trade, and service establishments. The majority of working children were found in rural areas (87 percent), where they work to supplement family earnings. In fact, children in rural areas are six times more likely to be working than those in urban areas. Many parents of rural children did not receive an education, and therefore, often do not value sending their children to school. Eighty-four percent of children who work do so in the agricultural sector, most in subsistence agriculture, which includes preparing fields, planting, tending crops, harvesting, herding livestock, and other activities. Most of these children do not attend school, in part because of living long distances from school facilities. Most work for their families, but a small percentage also works on commercial farms. Whether in subsistence agriculture, medium-scale enterprises, or commercial farms, children are vulnerable to hazardous environments and unhealthy working conditions. The Moroccan government has designated several forms of agricultural work as hazardous for children, including the application of pesticides; operation of farm machinery and dangerous tools; tending herds near areas of heavy traffic; agricultural production line work; working at heights such as in olive harvesting; and work in slaughterhouses.

Children work in industrial and artisan sectors in the production of textiles and carpets, and other light manufacturing activities. A large number of children work as junior artisans in the handicraft industry, many of them working as apprentices before they reach 12 years of age and under substandard health and safety conditions. Boys are also recruited to work as apprentice mechanics in urban areas with little supervision or instruction.

Children also work in construction, food production, and in the hospitality industry. In urban areas, many girls working as ''petites bonnes,'' or domestic servants, can be found in situations of unregulated ''adoptive servitude,'' in which girls from rural areas are ''sold'' by their parents, trafficked, and ''adopted'' by wealthy urban families to work in their homes. Although awareness raising programs have targeted urban centers, this practice is still commonly accepted. Children are also ''rented'' out by their parents and other relatives to beg.

Also in urban areas, thousands of street children work in the informal sector. Street children engage in diverse forms of work, including selling cigarettes, begging, shining shoes, and washing and polishing cars. While most street children are boys, an increasing number of girls are now seen on the street as well. Many of these girls had worked as household maids before fleeing from abusive employers. Street children are vulnerable to sexual and physical abuse and substance abuse. Many are forced into illicit activities such as prostitution, drug-selling and theft as means for collecting money for gang leaders.

The commercial sexual exploitation of children (CSEC) in Morocco involves both boys and girls. There are official reports of child prostitution in the cities of Agadir, Casablanca, Meknès, Tangier, and Marrakech. Morocco is a country of destination for children trafficked from sub-Saharan Africa, North Africa, and Asia and serves as a transit and origin point for children trafficked to Europe for the purposes of forced labor, drug trafficking, and CSEC. Children are also trafficked internally for exploitation as child domestic workers and beggars, and for prostitution. A growing number of girls are trafficked to El-Hajeb in the Middle Atlas mountains, where they are forced into prostitution.

ii. Relevant Policies, Programs, and Projects

There are a number of current efforts by the Government of Morocco, international organizations, and nongovernmental organizations (NGOs) to address *exploitive child labor* in Morocco and underlying causes related to poverty. The Government of Morocco has put in place a number of programs that contribute to achieving its National Action Plan to Eliminate Child Labor (2005–2015). The National Action Plan to Eliminate Child Labor focuses on improving implementation of child labor laws, raising awareness of these laws, and improving *basic education.* Sectoral plans target children in agriculture and herding, the industrial sector (carpets and stitching), metal and auto work, construction, the hospitality industry, and food production, as well as children working in the informal sector, such as street children and children engaged in CSEC.

The Government of Morocco's major development challenges include achieving sustainable macroeconomic growth; accelerating employment opportunities for the adult and *youth* labor market; improving access, efficiency, and quality in the delivery of education and basic social services; and reducing poverty and inequalities in rural areas and among poor, marginalized groups by raising living standards. Since the 1990s, the Moroccan government has emphasized addressing social and economic issues to reduce poverty and the development gap between the rural and urban areas. Some of these efforts have included the increase in development of rural infrastructure (roads, electricity, potable water), education reform, emergency programs for rural areas, and extension of medical services to the poor. The government has also established key measures to improve labor conditions and boost job prospects. A new Moroccan Labor code instituting reforms in the country's labor laws was enacted in 2003, and the government signed a Free Trade Agreement with the United States in 2004, which came into effect on January 1, 2006.

The minimum age for employment in Morocco is 15 years. The Ministry of Employment and Vocational Training (MEVT) is responsible for implementing and enforcing child labor laws and regulations. In February 2006, the MEVT created a Child Labor Unit. Morocco's laws provide for legal sanctions against employers who actively recruit children under the age of 15. Employers who are found employing children under age 15 may be punished with a fine. Legal remedies to enforce child labor laws include criminal penalties, civil fines, and withdrawal or suspension of one or more civil, national, or family rights, including denial of legal residence in the country for a period of 5 to 10 years. The law also enables inspectors and the police to bring charges against employers of children under age 15 in all sectors, including apprenticed children and children working in family businesses. The government's National Observatory for Children's Rights, a multi-sectoral body chaired by Princess Lalla Meriem, held its eleventh conference in June 2006 where the National Plan for the Protection of Children was adopted and emphasis was placed on implementation achievements and problems.

The Government of Morocco is participating in two USDOL-funded projects to eliminate child labor by providing educational opportunities for children engaged in or at risk of engaging in *exploitive child labor.* In 2003, USDOL funded a 4-year, USD 3 million Child Labor Education Initiative project implemented by Management Systems International (MSI). The MSI project, ''ADROS'', aims to eliminate the practice of selling and hiring child domestic workers by creating educational opportunities for those vulnerable to, or working in, domestic servitude. As of March 2007, the program had withdrawn 9,862 children from *exploitive labor* in domestic service and placed them in training and educational programs. USDOL funded another 4-year project in 2003, which is being implemented by ILO–IPEC. This USD 2.25 million project aims to strengthen national efforts against the *worst forms of child labor* in Morocco and, as of March 2007, has withdrawn or prevented 9,222 children from work, primarily in the agricultural sectors of the Gharb and Taroudat regions.

iii. Scope of Work

Applicants must take into account cross-cutting themes (discussed below), specific considerations, and additional activities that could affect project results in Morocco, and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation. Proposed strategies must address mechanisms for *withdrawal of children from,* and *prevention of children from entering, exploitive labor* and development of educational or training programs for children under 18 years. Proposed strategies should enable children to enroll in appropriate educational programs and successfully transition them into the formal education system or into vocational or other training that will allow them to improve the livelihood of their families and themselves.

1. Specific Target Groups, Sectors, and/or Geographic Focus

Applicants must focus their proposals on combating *exploitive child labor* in both rural and urban areas, and must propose specific efforts to address CSEC, trafficking of children for *exploitive labor,* domestic servitude, and *exploitive child labor* and *hazardous work* in agriculture. Where applicable, Applicants should specify how direct interventions for children below the minimum age of employment (14 and under) and children of employable age (15–17 years) differ. In rural areas, Applicants should specifically target *exploitive child labor* in agriculture, especially on commercial farms, where children's work prevents them from going to school and they are exposed to harmful chemicals, are forced to carry heavy loads, and may be injured by agricultural tools or machinery. In urban areas, Applicants should target children (mostly girls) sent from rural areas to work as domestic servants, and children working in formal enterprises such as factories and workshops. Consideration may also be given to street children engaged in, or *at-risk* of entering, the *worst forms of child labor.* Applicants are also encouraged to identify other areas/sectors for intervention, but must provide convincing reasons why the targeted sector merits funding.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Interventions and activities should support the Government of Morocco's 2005–2015 National Action Plan to Eliminate Child Labor. At minimum, collaborations should take place with the Ministry of National Education, Higher Education, Staff Training, and Scientific Research; the MEVT, including the Office for Vocational Training and Employment Promotion; the Ministry of Social Development, Family, & Solidarity; other government agencies overseeing vocational and apprenticeship programs relevant; ILO–IPEC; MSI; and relevant NGOs. Where applicable, Applicants are also encouraged to collaborate with the Ministry of Agriculture, Rural Development, and Sea Fisheries.

3. Implementing Environment/Cross-Cutting Themes

Applicants must propose a design that would take into consideration Morocco's major development challenges described in section (i). Background, of this portion of this solicitation. The strategy proposed by Applicants must reflect a strong understanding of Morocco's new Labor code and take advantage of macro-level trends and events such as those related to the Free Trade Agreement signed with the United States in 2004. Applicants should support government efforts to provide economic opportunity to the poor and rural groups, as well as efforts to enhance educational services and decent employment prospects for the country's growing *youth* population.

4. Project-Specific Strategies

Applicants must propose a strategy that supports the government's National Action Plan to Eliminate Child Labor (2005–2015). The project should support the broad objectives of the National Action Plan to Eliminate Child Labor: (a) Ensuring conformity of national child labor laws with international conventions and promoting their application through enforcement mechanisms and awareness raising activities, (b) expanding and strengthening of education and vocational training, and (c) development and strengthening of social protection mechanisms. Applicants' proposals must also support at least one of the government's sectoral action plans targeting children in agriculture and herding, the industrial sector (carpets and stitching), metal and auto work, construction, the hospitality industry, food production, street work, and CSEC.

In addition, Applicants should propose to strengthen the capacity of the Moroccan government and civil society organizations to identify and assist children engaged in, or *at-risk* of entering, the *worst forms of child labor.* Applicant should propose ways to improve the capacity of the Moroccan government to enforce existing labor laws. To address this issue, Applicants may propose activities to strengthen the Ministry of Social Development, Solidarity, and Labor's Child Labor Unit, improve the capacity of Morocco's labor inspectorate to identify cases of *exploitive child labor* and enforce the labor code, and expand piloted systems to monitor and identify child laborers and link them with social protection services.

Applicants should address low rates of school enrollment, high drop-out rates, and limited availability of schools, especially in rural areas where the majority of working children live and school attendance is the lowest. Projects may support professional training for teachers and implement capacity-building activities for Ministry of Education offices nationally and in targeted provinces to ensure improved service delivery, increased budgetary commitments and management, and awareness of *exploitive child labor.* Strategies may also include the direct provision of support costs to children, such as books and uniforms, in-school feeding programs, school supplies, and transportation assistance to remove educational barriers. Applicants are encouraged to develop creative solutions for education delivery, such as non-formal schools, including multi-grade programs in rural areas where formal schools may be unavailable, especially at the secondary level.

Applicants must develop a strategy that will increase the perceived relevance of education and training for children engaged in, or *at-risk* of engaging in, *exploitive labor,* their families and their communities with an aim toward increasing school enrollment. Applicants must show how education programs and awareness raising campaigns will be sensitive to, and respond to, cultural traditions that have led to lower school enrollment rates in rural areas of Morocco. Strategies should support government efforts to remove barriers that lead to gender disparities in enrollment, whether these are physical barriers, such as transportation obstacles, or attitudinal barriers, such as a perceived lower value amongst parents and communities of educating girls. Applicants may provide, as appropriate, support services such as psychosocial counseling and health care to *direct beneficiaries* and implement awareness-raising activities that highlight the hazards of *exploitive child labor* and the benefits of education for children.

Applicants should exhibit an understanding of current efforts to promote *youth* employment in Morocco and design interventions to strengthen the education system and support public/private partnerships to promote job training programs and *youth* employment. Applicants are encouraged to propose interventions to increase vocational training opportunities for *youth* of legal working age and support alternative income generating activities or skills training for parents to reduce their reliance on their children's labor to supplement family income and to encourage school enrollment.

Applicants are encouraged to conduct small-scale research projects and disseminate findings on the *unconditional worst forms of child labor* in Morocco. Reports suggests that the trafficking, commercial sexual exploitation of children, and other *worst forms of child labor*, do exist in the country, but more systematic information is needed. In considering projects in hazardous sectors, Applicants are encouraged to undertake action research on improving the occupational safety and health situation and developing injury prevention strategies to promote safe, *acceptable work* for children ages 15–17 years.

Applicants are also encouraged to demonstrate how previous child labor or education efforts of their organization have led to the mainstreaming and sustainability of project initiatives.

Support for the Philippine Timebound Program To Eliminate the Worst Forms of Child Labor

i. Background

The Republic of the Philippines has experienced positive acceleration and sustained Gross Domestic Product (GDP) growth in recent years. Yet, in light of a worsening poverty situation, the government faces tremendous fiscal constraints in its ability to finance poverty alleviation programs and provide for the most basic social services for its citizens. Rapid population growth and unequal income distributions continue to exacerbate the number of families and children living below the poverty line, and the increase in the incidence of children working in exploitive forms of work. The Philippines National Statistics Office estimated that approximately 4 million children 5 to 17 years, or 16.2 percent, were economically active in 2001. This represents a 12 percent increase in the number of working children since 1995.

An estimated 70 percent of working children are found in the rural economy. Approximately 53 percent of working children in rural areas are engaged in agriculture, hunting, and forestry. Children work as ''sakadas'' or farm workers on plantations or subsistence agriculture, and in both crop and livestock production while being exposed to various occupational safety and health hazards. Children are found working in variety of agricultural sectors: Coconut, corn, flower, livestock, pearl, rice, rubber, sugar, tobacco, and other fruit and vegetable farms. Many children are also involved in forestry-related activities, such as hunting and logging. Children involved in crop cultivation work under extreme heat; suffer from farm injuries caused by the use of sharp knives, ''bolos'' (machetes), sickles, and grain threshers; and are exposed to chemical, biological, and other agents found on the farm.

Children are also found working in a variety of industrial sectors and occupational activities, with many working under hazardous conditions. Some of the *worst forms of child labor* in the Philippines include the forced and bonded labor of children; the use of children in local drug trades; the commercial sexual exploitation of children (CSEC), including prostitution; the recruitment and use of children as soldiers in armed opposition groups; and the use of children in *hazardous work* in the agricultural industry, especially in growing sugar cane. Children in the commercial sex industry are used in the production of pornography and are exploited by sex tourists. Children are also found working in pyrotechnics production, deep-sea fishing, mining, and quarrying. Children living on the streets engage in informal labor activities such as scavenging or begging. Child domestic workers, primarily girls, or ''kasambahays'' are the backbone of many Filipino households working an average of 15 hours a day and on-call 24 hours a day, 7 days a week. Children are reportedly trafficked internally from rural areas to major cities, such as Bacolod, Cebu, and Metro Manila, and abroad to work in prostitution, domestic service, and other areas of the informal sector.

The Asian Development Bank has identified increases in disability in the general population as a contributing factor to poverty in the Philippines. Research on injuries among adults and children in the country's general population shows that injury fatality rates have increased 196 percent in the Philippines over a 35 year period (1960–1995). The Government of the Philippines, in consultation with Safe Kids Worldwide, has revealed that fatal and non-fatal injuries are among the leading causes of morbidity and mortality in Filipino children below the age of 15 years. In the last 30 years, childhood fatality rates attributed to injuries increased threefold in the country. In 2003 alone, approximately 420,000 Filipino children experienced an injury. At least 24 percent of economically active children 5–17 years working in the Philippines experienced a work-related injury in 2001. Children living in urban slum communities and distant rural villages have the highest prevalence of disabilities, which is compounded by limited access to health care services and unsanitary living conditions.

In rural areas, limited employment opportunities and low wage jobs for adults lead many children to work to supplement family income. Parents who perceive the education available to their children to be of low quality or lacking relevance for their children's future are more likely to opt that their children enter the workforce early. Also problematic is the lack of secondary schools in remote parts of the Philippines, leaving numerous children, especially girls, unable to continue their education past the primary school level and forcing them to seek early employment. Regrettably, this is the case for many girls from poor rural and farming communities in the Visaya and Mindanao regions who migrate or are trafficked from rural to urban areas for the purposes of domestic service or commercial sexual exploitation. In addition, rural to urban migration has increased the number of urban poor families and children contributing to high numbers of children working on the streets and scavenging.

ii. Relevant Policies, Programs, and Projects

Even prior to its ratification of the UN Convention on the Rights of the Child (CRC) and ILO Conventions 138 and 182, the Government of the Philippines began efforts to combat child labor in earnest around the mid-1980s. The Government of the Philippines intensified actions against child labor by entering into a partnership with UNICEF in 1988; creating a National Child Labor Program Committee in 1992; joining ILO–IPEC in 1994; conducting the first national child labor survey in 1995; launching the historic Global March Against Child Labor in 1998; and collaborating on three sub-regional programs of child labor in the fishing, footwear, and mining industries.

These efforts continue today, where the Philippine National Strategic Framework for Plan Development for Children, 2000–2025, also known as ''Child 21,'' and the National Program Against Child Labor (NPACL) Framework serve as the primary government policy instruments for the development, implementation, monitoring, and evaluation of programs designed to prevent and eliminate child labor in the Philippines. Child 21 sets out broad goals to achieve quality of life for Filipino children by 2025, and the NPACL lays out the blueprint for reducing the incidence of child labor by 75 percent by 2015.

The NPACL has a committee chaired by the Department of Labor and Employment (DOLE) with assistance from ILO–IPEC and UNICEF. Other major partners involved in fulfilling the mission of NPACL include government agencies, workers' groups, employer organizations, nongovernmental allies, and international development institutions. To carry out NPACL objectives in communities, Regional Child Labor Committees (RCLC), Program Implementation Committees Child (PIC) and Barangay Councils for the Protection of Children (BCPC) have been established at the regional, local, and village levels. Child labor concerns have also been mainstreamed into the following key policy documents: Medium Term Philippine Development Plan (2004–2010), National Plan of Action for Decent Work (2005–2007); and Education for All National Plan (2004–2015).

On June 28, 2002, the Government of the Philippines became the first country in Southeast Asia and fourth country in the world to launch a Timebound Program to eliminate the *worst forms of child labor* in targeted sectors over a specified period of time. The Philippine Timebound Program (PTBP) embodies the strategic framework and implementation plans of the NPACL. The initial phase of PTBP seeks to prevent or withdraw 40,000 children from exploitive work in 6 sectors and in 6 regions spanning a total of 8 provinces. The priority sectors include children working in (1) deep-sea fishing, (2) mining/quarrying, (3) pyrotechnics production, (4) sugar cane farming, (5) domestic work, and (6) commercial sexual exploitation. Initial target areas were located in Bulacan, Metro Manila, Camarines Norte, Iloilo, Negros Occidental, Negros Oriental, Cebu, and Davao. USDOL has provided USD 10.7 million in funding for projects in support of the PTBP, which are being implemented through ILO–IPEC, World Vision, and Winrock International. In addition, the Philippines was part of an ILO–IPEC inter-regional project to prevent and reintegrate children involved in armed conflict, with a geographic focus in Mindanao.

The NPACL is currently undertaking an assessment of the PTBP, which will inform the target sectors for Phase II of the PTBP. The new phase will likely expand existing sectors and identify new sectors where children are working in exploitive conditions for priority elimination. Based on their initial research, partners of the NPACL have proposed to expand agricultural sectors to possibly include children working on rubber farms. In addition, scavenging and waste recycling have been recommended as future sectors for consideration. Finally, an increase in the trafficking of children for domestic labor and prostitution has received attention as possible future sectors for interventions. Additional sectors in agriculture where children are also involved in *hazardous work* and are at risk for occupational injuries include forestry and logging activities, livestock and hog farming, and other crop-related activities.

The Government of the Philippines and its nongovernmental partners have demonstrated commitment to children by ratifying key UN conventions on children's welfare; passing national legislation against the *worst forms of child labor*; and implementing programs to prevent and remove children from hazardous and exploitive work. However, government resources available for programs to combat *exploitive child labor* are modest in comparison to the magnitude of the problem.

The Government of the Philippines continues to run its flagship program through DOLE, ''Sagip Batang Manggagawa'' (SBM—Rescue the Child Laborers). SBM uses community-based mechanisms for detecting, monitoring, and reporting children working in abusive and hazardous situations; provides immediate relief through search and rescue operations through Quick Action Teams (QAT); offers legal, health, and psychosocial services to children rescued from *exploitive labor* and sexual exploitation; and facilitates the reintegration of children into their communities of origin.

The Government of the Philippines also has a long history of instituting legislative reforms to protect the welfare of children and regulate the employment of minors. The Labor Code of the Philippines and Republic Act (R.A.) 7658 of 1993 sets the basic minimum age for employment at 15 years, with the exception that a child may be permitted to work under the supervision of a parent or legal guardian as long as the work does not interfere with school or place the child's life, safety, health, morals, or normal development in danger. In accordance with R.A. 7658 and the Labor Code, DOLE Order No. 4 of 1999 outlines major areas of work and related occupations regarded as hazardous for children.

R.A. No. 9231 of 2003, An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, codified into domestic law the *worst forms of child labor* as specified in ILO Convention 182. The Act also regulates hours of work; delineates the management and disbursement of the working child's income; guarantees access to education, health, and legal services; and includes more stringent penalties for those in violation of the law.

To address issues of trafficking in persons, the Government of the Philippines passed R.A. 9208 of 2003, Anti-Trafficking in Persons Act of 2003, which criminalizes and establishes penalties for the trafficking of children and adults for the purposes of exploitation, including trafficking for adoption, sex tourism, prostitution, pornography, the recruitment of children into armed conflict, or under the guise of arranged marriage.

iii. Scope of Work

Taking into account the challenging implementing environment in the Philippines and the current government's attention and priority to the unmet needs of the most disadvantaged sectors of the population, Applicants must propose a creative and innovative approach that addresses the challenges of reintegrating and educating children who are in the *worst forms of child labor*. The application must also take any cross-cutting themes (discussed below) into account that could affect project results in the Philippines and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or to reduce obstacles to, successful implementation.

1. Specific Target Groups, Sectors, and/or Geographic Focus

Applicants must focus their proposals on combating prostitution of children, *exploitive child labor* in agriculture, especially in the sugar cane industry, and *exploitive labor* in domestic service. Children trafficked from their home communities for domestic service or prostitution should be given priority consideration. Applicants should make the withdrawal and prevention of children 15 years and under from *exploitive labor* a priority. In determining other target sectors and geographic areas for priority elimination, Applicants should consult with NPACL and provide a justification for the proposed sectors and geographic areas. At minimum, Applicants must target four sectors and work in at least five regions. In instances in which proposed sectors or geographic areas may fall outside the priority areas of the NPACL, Applicants must offer a convincing justification for this choice. Project interventions may be carried out in both urban and rural areas, however, the geographic focus of the project should be on regions where there is a high incidence of *exploitive child labor*. In considering the distribution of children for target sectors and geographic areas, Applicants should take into account that a majority of working children in the Philippines is in rural areas and in agriculture.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants should propose a strategy to collaborate with the NPACL and ensure the effective enforcement of recent legal reforms through the proposed project of support to the PTBP. In developing its approach to strengthen the national policy framework on child labor and integrate strategies into already existing government programs, Applicants should coordinate with key government agencies, such as the DOLE; Department of Education (DepEd); Department of Social Welfare and Development (DSWD); Department of Agrarian Reform (DAR); and the Department of Health (DOH). Within the DOLE, Applicants should specifically coordinate with the Bureau of Women and Young Workers (BWYW) and Occupational Safety and Health Center (OSHC), and the Work Improvement in Neighborhood Development program. In addition to government agencies, Applicants should collaborate with key stakeholders working to fulfill the mission of the NPACL (i.e., relevant nongovernmental organization, employers' and workers' groups, and international institutions).

Applicants should also build upon and not duplicate activities from the first phase of the PTBP and ensure the sustainability of effective project strategies by previously funded USDOL projects to support the PTBP.

3. Implementing Environment/Cross-Cutting Themes

The Philippines' longstanding macroeconomic policies have resulted in large budget deficits with debt interest payments as a percentage of the national budget increasing from 19.5 percent in 1998 to a high of 27.4 percent in 2003. In order for the Government of the Philippines to see sustained improvements in the economic forecast and achieve its 2015 goal to substantially decrease the number of children in hazardous occupations, poverty alleviation and child labor elimination strategies must take into account (1) slow economic development, especially in the agricultural sector; (2) unequal distribution of incomes among citizens; (3) high unemployment, elevated underemployment, and low wage rates for adult workers; (4) rapid population growth; (5) reduction of the federal deficit and improved governance; (6) lack of resources and access to education and basic social services; and (7) political instability and armed conflict, particularly in Mindanao.

Applicants should consider how the macroeconomic factors might affect the project in the geographic areas where the project would be implemented and propose a design that would contribute to addressing the implementing environment. In addition, Applicants should propose a strategy that addresses the hazardous labor conditions that lead to injuries among working children, especially those working in agriculture (see information on injury and disabilities among children in the Philippines in section (i) Background).

4. Project-Specific Strategies

Applicants must propose a strategy to support the Government of the Philippines in fulfilling its goals under Phase II of the PTBP within the NPACL framework. Applicants must work with NPACL's following programmatic areas: (1) Action research; (2) advocacy and mobilization; (3) children's participation; (4) community organization and empowerment; (5) law and policy; (6) surveillance and rescue; (7) workplace monitoring and inspection; (8) capability building; (9) documentation, monitoring and evaluation; (10) direct services; and (11) institutionalization.

At the policy level, Applicants must demonstrate how its approach carries out the strategic framework and implementation plans of the NPACL to reduce the number of children in the *worst forms of child labor*, especially hazardous occupations, by 75 percent by 2015. Applicants should demonstrate how it intends to effectively support implementation and enforcement of R.A. No. 9231, An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child and R.A. 9208, Anti-Trafficking in Persons Act of 2003. In addressing the *hazardous work* activities for children, Applicants should support the NPACL efforts to update DOLE Order No. 4 of 1999, Hazardous Work List. Applicants should also consider how to further the enactment of the ''Batas Kasambahay'' or Domestic Workers Bill. Finally, Applicants should develop a strategy that addresses the broader development goals eliminating child labor as specified in the following key policy documents: Medium Term Philippine Development Plan (2004–2010), National Plan of Action for Decent Work (2005–2007); and Education for All National Plan (2004–2015). In carrying out the project to *withdraw children from*, and *prevent children from entering, exploitive child labor* through direct action, Applicants should develop a strategy that builds the capacity and reflects the institutional organization at the NPACL at the regional, provincial and village levels. Applicants should work with implementing agencies to reach the community through RCLC, PIC and BCPC.

Applicants must develop a strategy that addresses the opportunity costs of schooling for parents in the Philippines that currently sway them to allow children to enter the workforce prematurely, especially when they weigh the expense of schooling, access to schools, and the perceived irrelevance of education. Applicants should coordinate with the DepEd to prioritize regions and ensure that primary schools (formal or non-formal), secondary schools, and vocational training centers offer quality, relevant instruction. The establishment of alternative educational delivery mechanisms is also encouraged, such as multi-grade schools in remote rural areas are also encouraged, especially in farm communities with high pockets of child labor. Furthermore, Applicants should ensure the effective decentralization of educational administration and policies, such as the no-fee policy, in a way that supports the integration of current or former working children.

Finally, in considering projects in the sugar cane industry or other agricultural sectors, Applicants are encouraged to undertake action research on improving the occupational safety and health situation and developing injury prevention strategies to promote safe, *acceptable work* for children 15–17 years, building on the efforts of the USDOL-funded ILO–IPEC, World Vision, and Winrock projects of support to the PTBP that worked to eliminate *hazardous work* for children in the sugar cane industry.

Combating Exploitive Child Labor in Togo Through Education

i. Background

An estimated 64.5 percent of children ages 5 to 14 were found working in Togo in 2000, according to the Understanding Children's Work (UCW) Project. Children work in both rural and urban areas, especially in family-based farming and small-scale trading. Children are also found working in factories, as domestic servants, and in commercial sexual exploitation (CSEC).

Togo is a country of origin, destination, and transit for children trafficked for the purposes of domestic labor, sexual exploitation and agricultural work. Trafficked children also work as produce porters and roadside sellers. Four primary routes for child trafficking in Togo have been documented: (1) The domestic trafficking of Togolese girls, particularly to the capital city of Lomé; (2) the trafficking of Togolese girls to Gabon, Benin, Niger, and Nigeria; (3) the trafficking of girls from Benin, Nigeria, and Ghana to Lomé; and (4) the trafficking of boys to Nigeria, Benin, and Côte d'Ivoire. There are also reports of children being trafficked to Lebanon, Saudi Arabia, and Europe. Children represent a majority of those trafficked, and children of Kotocoli, Tchamba, Ewe, Kabye, and Akposso ethnicities are particularly *at-risk* of being trafficked. Most of these children come from poor rural areas, primarily the Maritime, Plateau, and Central regions.

HIV/AIDS is a factor that may contribute to the incidence of *exploitive child labor* in Togo, including the *worst forms of child labor.* According to UNICEF, some 88,000 children have been orphaned in Togo due to HIV/AIDS.

By law, education is free and compulsory in Togo until age 15. However, parents are increasingly responsible for both direct and indirect costs of education, and secondary education is not affordable for many families. School fees ranging from 4,000 to 13,000 CFA (USD 7 to 24) are often required, though the fees for girls and economically disadvantaged children may be reduced or waived entirely. Togolese schools are overcrowded, have crumbling infrastructures, and lack basic supplies. Teachers are poorly trained, and the government has difficulty in paying teachers' salaries, resulting in a shortage of teachers in Togo. Other deficiencies in the education system include low educational quality in rural areas, high repetition and drop-out rates, and sexual harassment of female students by male teachers.

ii. Relevant Programs, Policies, and Projects

The Ministry of Labor and the Ministry of Population, Social Affairs, and Promotion of Women have primary responsibility for enforcing the country's child labor laws. These ministries and the Ministries of Justice, Health, and Security, including Togo's police, army, and customs units, are involved in anti-trafficking efforts. In addition, the Ministry of Tourism is working to combat sexual tourism, including CSEC. The government has taken initial steps to combat the *worst forms of child labor*.

Togolese law sets the minimum employment age in any enterprise at 15 years, unless an exemption is granted by the Ministry of Labor after consulting with the National Council on Work. Children, however, may not begin apprenticeships before completing the mandatory level of education, or before the age of 15. In 2006, Togo's National Assembly adopted a new Labor Code, which includes provisions on child labor, including the *worst forms of child labor.* Under the new law, the ''*worst forms of child labor*,'' parallel the definition from ILO Convention 182, and exposing a child to a worst form of child labor is punishable by imprisonment. The government also is implementing a National Plan of Action on Child Abuse, Child Labor, and Child Trafficking that includes activities such as strengthening border controls, awareness-raising campaigns, and establishing community structures for prevention of child trafficking and reintegration of trafficked children.

In 2005, the government passed a law prohibiting child trafficking, with a penalty of up to 10 years in prison for traffickers, though inconsistencies in the law have made implementation and prosecution difficult. In 2006, Togo was 1 of 24 countries to adopt the Multilateral Cooperative Agreement to Combat Trafficking in Persons, especially Women and Children, in West and Central Africa and the Joint Plan of Action against Trafficking in Persons, especially Women and Children in the West and Central African Regions. As part of the Multilateral Cooperative Agreement, the governments of West Africa agreed to put into place a child trafficking monitoring system; to ensure that birth certificates and travel identity documents cannot easily be falsified or altered; to provide assistance to each other in the investigation, arrest and prosecution of trafficking offenders; to protect, rehabilitate and reintegrate trafficked children; and to improve educational systems, vocational training and apprenticeships.

In recent years, the Government of Togo has supported two USDOL-funded projects to eliminate *exploitive child labor* and provide educational opportunities for these children. Since 2001, the government has actively participated in a USD 9 million regional project, funded by USDOL and implemented by ILO–IPEC, to combat trafficking in children for labor exploitation in West and Central Africa, known as ''LUTRENA''. Ending in June 2007, the LUTRENA project has created a network of local vigilance committees to monitor and prevent child trafficking in communities throughout Togo and has launched a central database on trafficked children, which includes information from the government (customs, police, etc.), NGOs, and the community. From 2002–2006, CARE Togo implemented a USD 2 million project funded by USDOL to combat child trafficking through education, directly serving over 6,000 children who were withdrawn or prevented from being trafficked. The project targeted 6 prefectures and 60 villages in the Maritime and Central regions, based on the high incidence of child trafficking and poor provision of educational services in these regions. Interventions included mobilizing and empowering communities to protect children from being trafficked, awareness-raising campaigns through radio broadcasts and door-to-door sensitization efforts, involvement of parents and communities in school management, support to reintegration centers, and improvements to school infrastructure.

Togo also participates in an ILO–IPEC project to combat child labor in Francophone Africa, funded by France, and an ILO–IPEC project concerning the social reintegration of minors involved in illicit activities, which is funded by the Italian government. The Government of Togo also works in partnership with UNICEF, Terre des Hommes, Plan International, and other NGOs on child labor and trafficking issues.

iii. Scope of Work

Applicants must take into account cross-cutting themes (discussed below) and specific considerations that could affect project results in Togo, and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation. In Togo, specific considerations for project strategies and program activities should include the following components:

1. Specific Target Groups, Sectors, and/or Geographic Focus

The project should focus direct interventions on *withdrawing children from, and preventing children from entering, exploitive child labor*, including trafficking in persons.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants must demonstrate that the proposed project activities support the Government of Togo's National Plan of Action on child abuse, child labor, and child trafficking. The project must also assist government efforts to implement the Multilateral Cooperative Agreement to Combat Trafficking in Persons, especially Women and Children, in West and Central Africa and the Joint Plan of Action against Trafficking in Persons, especially Women and Children in the West and Central African Regions. Collaborations should take place with the Ministry of Labor; the Ministry of Population, Social Affairs, and Promotion of Women; the Ministry of Education; the Ministry of Justice; the Ministry of Security; the Ministry of Health; the ILO; and UNICEF. Applicants should have a thorough knowledge of the USDOL-funded anti-trafficking project implemented by CARE in 2002–2006 and must collaborate with the USDOL-funded, ILO–IPEC LUTRENA project in addressing of trafficking in children in Togo. The proposal must also demonstrate that the project will work collaboratively with local and regional institutions and organizations already engaged in child labor and education issues in Togo.

3. Implementing Environment/Cross-Cutting Themes

Applicants must propose strategies that address issues related to trafficking of children for *exploitive child labor* and the impact of HIV/AIDS in increasing the number of children engaged in, or *at-risk* of entering, *exploitive child labor.*

4. Project-Specific Strategies

Applicants should demonstrate an understanding of the underlying sensitivities involved in returning children trafficked, sold, or abducted for *exploitive child labor*, or withdrawing children from CSEC, and propose strategies for addressing these situations, which may include the provision of psychosocial counseling. Applicants should also consider and seek to address the increased incidence among, and apparent vulnerability of, certain ethnic groups to child trafficking.

Combating Exploitive Child Labor Amongst War-Affected Children in Northern Uganda

i. Background

Child labor is common in Uganda, especially in the informal sector. Children sell small items on the streets, work in shops, beg for money, and are involved in the commercial sex industry. Children also work in agriculture, brickmaking, charcoal burning, quarrying, and construction. An ILO–IPEC report based on the 2000–2001 Uganda Demographic and Health Survey estimated the total number of working children aged 5 to 17 years in the country at 2.9 million, accounting for 34.2 percent of all children in this age group.

HIV/AIDS is a significant factor contributing to the incidence of *exploitive child labor*, including the *worst forms of child labor* in Uganda. According to UNICEF, almost two million children have been orphaned in Uganda, primarily due to HIV/AIDS.

In northern Uganda, there are enormous barriers that prevent children from accessing and completing a quality education. Since 1986, the Lord's Resistance Army (LRA) has abducted approximately 25,000 children from Uganda and southern Sudan to serve as porters and soldiers. Abducted girls often suffer the added trauma of rape, and are frequently given to rebel commanders as sexual slaves. Twenty years of war between the government and the LRA has forced approximately 1.6 million people (a majority of whom are women and children) to seek refuge in Internally Displaced Persons' (IDP) camps or, alternatively, in the towns of Gulu and Kitgum. With the signing of a peace agreement between the government and the LRA in August 2006, some families have left the IDP camps to return to their land. In the Karamoja region, drought and ethnic conflict over cattle has put thousands of people at risk. The government's forced disarmament program has also led to violent clashes between the Ugandan military and the agro-pastoralist Karimojong people, particularly young men.

Children in northern Uganda face an increase in stress from war, violence, and displacement. Displaced and formerly abducted children must cope with the psychological effects of this trauma. Moreover, in many cases, they return to school after a long absence to find themselves in the difficult position of being older than their classmates and having missed years of schooling. Formerly abducted girls have additional challenges as they often return from captivity as new mothers of young children.

Despite government incentives to local teachers and a teacher training college located in Gulu, northern Uganda is suffering from a shortage of educators. The teachers are often unequipped to accommodate the special needs of students adversely affected by conflict in the region and/or impacted by HIV/AIDS. Furthermore, for many children, the financial costs of attending school in northern Uganda are too great. In 1997, the Ministry of Education instituted a policy of Universal Primary Education (UPE) to make formal schooling more affordable and thus more available to students in Uganda; however, families must pay for school materials, uniforms, Parent Teacher Association (PTA) fees, and lunch and building fees. At the secondary education level, families are also required to pay tuition. Although some *youth* have an interest in learning skills or a trade, most technical training colleges require a level of academic achievement that former child soldiers and other war-affected youth have not attained.

ii. Relevant Policies, Programs, and Projects

The Ministry of Gender, Labor, and Social Development (MGLSD), charged with enforcing Uganda's child labor laws, investigates child labor complaints through district labor officers. The MGLSD houses a Child Labor Unit and implements the government's 2006 National Child Labor Policy and National Plan of Action to Eliminate Child Labor. The MGLSD also coordinates Uganda's Orphans and Vulnerable Children Policy, which extends social services to groups that include children who participate in the *worst forms of child labor*. In addition to the MGLSD, local governments are empowered to investigate child labor complaints. The National Council of Children, the Family Protection Unit in the police department, and the Uganda Human Rights Commission gather and act upon reports of child abuse.

The Ministry of Education and Sports has developed strategies for working with children living in areas of conflict in a Basic Education Policy and Costed Framework for Educationally Disadvantaged Children. The policy aims to increase community participation in education, strengthen linkages between formal and non-formal education, improve education quality by ensuring appropriate infrastructure and curriculum content and methodology, and provide appropriate learning materials. The Ministry of Education and Sports and the MGLSD have established a multi-agency working group to address the needs of children who have suffered from armed conflict.

The law sets the minimum age for employment at 14 years and prohibits persons below the age of 18 from engaging in hazardous labor. The Constitution of Uganda states that children under 16 years have the right to be protected from social and economic exploitation and should not be employed in *hazardous work;* work that would otherwise endanger their health, physical, mental, spiritual, moral, or social development; or work that would interfere with their education. The law prohibits compulsory and forced labor. While trafficking in persons is not a specific violation under Ugandan law, related offenses cover detaining a person with sexual intent, which is punishable up to 7 years of imprisonment; trading in slaves, which is punishable by up to 10 years of imprisonment; and "defilement," defined as having sex with a minor, which is a punishable offense with a range of sentences leading up to the death penalty.

The Government of Uganda supports three USDOL-funded projects to eliminate child labor and provide educational opportunities for children engaged in or at risk of engaging in *exploitive labor.* The government is participating in the USD 3 million "Opportunities for Reducing Adolescent and Child Labor through Education (ORACLE)" project funded by USDOL and implemented by the International Rescue Committee and the Italian Association for Volunteers in International Service. Ending in September 2007, the ORACLE project contributes to the prevention and elimination of the *worst forms of child labor* amongst conflict-affected children in northern Uganda through the provision of transitional and non-formal education and family-based poverty reduction strategies. As of September 2006, the project has withdrawn or prevented 4,047 children from *exploitive labor* in Kitgum and Pader, updated the skills of 716 teachers, and conducted public awareness campaigns on the problems of child labor and the value of education. The government is also participating in a USD 3 million USDOL-funded, ILO-IPEC regional project to combat and prevent HIV/AIDS-induced child labor in Uganda and Zambia. To reduce vulnerability to participation in child labor, this project provides vocational and *basic education,* psychosocial rehabilitation and social protection to children orphaned by HIV/AIDS. The "Kenya, Uganda, Rwanda, and Ethiopia Together" (KURET) Project is also being implemented in Uganda by World Vision, in collaboration with the International Rescue Committee and the Academy for Educational Development. This USD 14.5 million project, funded by USDOL, provides educational alternatives to children living in HIV/AIDS-affected areas who are especially vulnerable to engaging in the *exploitive child labor*, and has activities in the northern Uganda districts of Arua, Lira, and Gulu.

In collaboration with the government, UNICEF provides funding for early childhood development, girls' education initiatives, and infrastructure improvements. USAID supports training for School Management Committees, develops HIV/AIDS education for primary school students, and promotes teacher training. Several NGOs have also developed programs focusing on the rehabilitation and reintegration of former child soldiers and war-affected children, as well as HIV/AIDS-affected children.

iii. Scope of Work

Applicants must take into account cross-cutting themes (described below), specific considerations, and additional activities that could affect project results in northern Uganda, and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation. In northern Uganda, specific considerations for project strategies and program activities should include the following components:

1. Specific Target Groups, Sectors, and/or Geographic Focus

The project should focus direct interventions on *withdrawing and preventing* war-affected children and *youth* from *exploitive child labor,* with particular emphasis on the *worst forms of child labor,* in northern Uganda, including the Karamoja region.

2. Collaboration With Specific Programs and/or Links to Specific National Policies

Applicants must demonstrate that the proposed project activities support the Government of Uganda's National Policy on Elimination of Child Labor and National Plan of Action on Elimination of Child Labor. Collaborations should take place with the MGLSD and the Ministry of Education and Sports, and the Applicants must also demonstrate that the project will work collaboratively with local and regional institutions and organizations already engaged in child labor and education issues in northern Uganda. The proposal should support the efforts begun under the USDOL-funded ORACLE project to *withdraw* and *prevent* children from engaging in *exploitive labor* in northern Uganda. Applicants should also demonstrate collaboration and coordination with the USDOL-funded KURET and ILO–IPEC Regional HIV/AIDS projects in addressing the cross-cutting theme of HIV/AIDS in Uganda. Given the complex social situation of children in northern Uganda, Applicants are also encouraged to collaborate with other existing programs working on issues of poverty, health and nutrition, community development, reintegration, and conflict resolution.

3. Implementing Environment/Cross-Cutting Themes

USDOL seeks to fund a sustainable program that provides for the emerging educational needs of war-affected children engaged in, or *at risk* of engaging in, *exploitive child labor* as northern Uganda transitions towards peace. Applicants should take into consideration the fluidity and constantly changing nature of the security situation in northern Uganda and related migrations flows. Applicants must also incorporate the cross-cutting theme of HIV/AIDS into the project strategy.

4. Project-Specific Strategies

In developing the project strategy, Applicants must provide a working definition of "war-affected children/*youth*" that will be used in identifying potential *direct beneficiaries* under the project and should account for the demographic and social characteristics of such children and *youth*. Applicants should also exhibit an understanding of current efforts to promote *youth* employment in northern Uganda.

II. Award Information

Type of assistance instrument for projects to be awarded under this solicitation: *Cooperative Agreement*. USDOL's involvement in project implementation and oversight is outlined in section VI.2. The duration of the project(s) funded by this solicitation is three to four (4) years. The start date of project activities will be negotiated upon awarding of the *Cooperative Agreement*, but will be no later than September 30, 2007.

Up to USD 46.494 million will be awarded under this solicitation. USDOL may award 10 or more *Cooperative Agreements* to one or more organizations and/or *Associations* that may apply to implement projects to combat *exploitive child labor* in the following 10 countries: Bolivia (up to $3.344 million), Cambodia (up to $4 million), Colombia (up to $5.1 million), Democratic Republic of the Congo (up to $5.5 million), the Dominican Republic (up to $4 million), Indonesia (up to $5.55 million), Morocco (up to $3 million), the Philippines (up to $5.5 million), Togo (up to $5 million), and Uganda (up to $5.5 million). The Grantee may not subgrant any of the funds obligated under these *Cooperative Agreements*, but may use subcontracts. See section IV.5.E for further information on subcontracts and Appendix D for additional clarification on the differences between subgrants and subcontracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization(s), including any faith-based, community-based, or public international organization(s) capable of successfully developing and implementing educational programs that aim to *withdraw children from*, or *prevent children from entering, exploitive child labor* in the target country is eligible to apply. However, the Grantee (or Lead Grantee, in the case of an *Association*) is not allowed to charge a fee (profit). Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of *Cooperative Agreement* recipients. Applications from foreign governments and entities that are agencies of, or operated by or for, a foreign state or government will not be considered. An Applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the *Cooperative Agreement* (see section V.1.C.ii). Please Note: Applicants may apply for more than one *Cooperative Agreement* under this solicitation; however, separate applications must be submitted for each country. If applications for more than one Cooperative Agreement are combined, they will not be considered.

If it is deemed the most effective and efficient strategy for achieving the goals outlined in the Scope of Work, USDOL may award one or more *Cooperative Agreements* to an *Association*, which is a partnership of more than one organization(s). Any such *Association* must submit to USDOL, as an attachment to the application, an *Association* agreement, reflecting an appropriate joint venture, partnership, or other contractual agreement and outlining the deliverables, activities, and corresponding timeline for which each Associate will be responsible. Copies of such agreements will not count toward the page limit.

If any entity identified in the application as an Associate does not sign the *Cooperative Agreement*, the Lead Grantee must provide, within 60 days of award, either a written subcontract agreement with such entity, acceptable to USDOL, or an explanation as to why that entity will not be participating in the *Cooperative Agreement*. USDOL reserves the right to re-evaluate the award of the *Cooperative Agreement* in light of any such change in an entity's status and may terminate the award if USDOL deems it appropriate.

For the purposes of this proposal and the *Cooperative Agreement* award, the Lead Grantee will be: (1) The primary point of contact with USDOL to receive and respond to all inquiries, communications and orders under the project; (2) the only entity with authority to withdraw or draw down funds through the Department of Health and Human Services—Payment Management System (HHS–PMS); (3) responsible for submitting to USDOL all deliverables, including all technical and financial reports related to the project, regardless of which Associate performed the work; (4) the sole entity that may request or agree to a revision or amendment of the award or the *Project Document*; and (5) responsible for working with USDOL to close out the project. Note, however, that each Associate is ultimately responsible for overall project performance, regardless of any assignment of specific tasks, but Associates may agree, among themselves only, to apportion the liability for such performance. Each Associate must comply with all applicable federal regulations and is individually subject to audit.

In accordance with 29 Code of Federal Regulations (CFR) part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation.

2. Other Eligibility Requirements

Applicants must include their Dun and Bradstreet Number (DUNS) in the organizational unit section of Block 8 of the SF 424. For *Associations*, Block 8 of the SF 424 should contain the DUNS number of the proposed Lead Grantee, and a list of the DUNS number(s) of all proposed members of the *Association* should be included as an attachment to the SF 424. DUNS is an acronym which stands for ''Data Universal Numbering System,'' and a DUNS number is a unique nine-digit number used to identify a business. Beginning October 1, 2003, all Applicants for Federal grant funding opportunities are required to include a DUNS number with their application *per* the Office of Management and Budget Notice of Final Policy Issuance, 68 **Federal Register** 38402 (June 27, 2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number. To obtain a DUNS number call 1–866–705–5711 or access the following Web site: *http://www.dnb.com/us/*.

Requests for exemption from the DUNS number requirement must be made to the Office of Management and Budget (OMB), Office of Federal Financial Management at 202–395–3993. If no DUNS number is provided in the application, and the Applicant does not provide evidence of an OMB exemption from the DUNS number requirement, then the application will be considered non-responsive.

After receiving a DUNS number, Applicants must also register as a vendor with the Central Contractor Registration through the following Web site: *http://www.ccr.gov* or by phone at 1–888–227–2423. Central Contractor Registration (CCR) should become active within 24 hours of completion. For any questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423.

After registration, Applicants will receive a confirmation number. The Point of Contact listed by the organization will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

3. Cost Sharing or Matching Funds

This solicitation does not require Applicants to share costs or provide matching funds; however, Applicants are encouraged to do so, and this is a rating criteria worth up to five (5) additional points (see section V.1.F.). Applicants who propose matching funds, in-kind contributions, and other forms of cost sharing must indicate their estimated dollar value in the Standard Form (SF) 424 and SF 424A submitted as part of the application. Grantees should note that they will be responsible for reporting on these funds quarterly in financial reports (SF 269s) and are liable for meeting the full amount of these costs during the life of the *Cooperative Agreement*.

IV. Application and Submission Information

1. Application Package

This solicitation contains all of the necessary information, including information on required forms, needed to apply for *Cooperative Agreement* funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at: *http://www.archives.gov/federal_register/index.html*.

2. Content and Form of Application Submission

Applications may be submitted to USDOL in hard copy or electronically at *http://www.grants.gov*. Applicants electing to submit hard copies must submit one (1) blue ink-signed original, complete application, plus three (3) copies of the application. Applicants may submit applications for one or more countries. However, Applicants applying for a *Cooperative Agreement* for more than one target country must submit a separate application for each country. The application must consist of two (2) separate parts, (1) a cost proposal and (2) a technical proposal, as described below. Applicants should number all pages of the application. All parts of the application must be written in English, in 10–12 pitch font size.

Part I of the application, the cost proposal, must contain the SF 424, Application for Federal Assistance, and Sections A–F of the Budget Information Form SF 424A. Applicants are also required to submit a detailed *outputs-based budget* that links costs to project design and an accompanying budget narrative. The SF 424, SF 424A, and a sample *outputs-based budget* are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*. The individual signing the SF 424 on behalf of the Applicant must be authorized to bind the Applicant.

The cost proposal must contain information on the Applicant's indirect costs, using the form provided on ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*. Applicants should note all instructions outlined on this form and include one of the following supporting documents, as applicable, in their application: (1) A current, approved Cost Allocation Plan (CAP); (2) a current Negotiated Indirect Cost Rate Agreement (NICRA); or (3) a Certificate of Direct Costs. In the case of Associations, each member of the Association must submit a copy of the aforementioned documents.

All Applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1890–0014), which has been provided in Appendix D.

Part II, the technical proposal, demonstrates the Applicant's capabilities to plan and implement the proposed project in accordance with the provisions of this solicitation. The Technical Proposal must not exceed 45 single-sided (8½″ × 11″), double-spaced pages with 1-inch margins. The technical application must identify how Applicants will carry out the Scope of Work in section I.3. of this solicitation. The following information is required:

- A two-page abstract summarizing the proposed project and Applicant profile information including: Applicant name, contact information of the key contact person at the Applicant's organization in case questions should arise (including name, address, telephone and fax numbers, and e-mail address, if applicable), project title, *Association* members and/or subcontractors (if applicable), proposed project activities, funding level requested and the amount of leveraged resources, if applicable;
- A table of contents listing the application sections;
- A project design description as specified in the Application Evaluation Criteria found in section V.1.A. of this solicitation (maximum 45 pages) and a corresponding *Logical Framework* matrix as described in section V.1.A;
- A *Sustainability Plan*
- A *Work Plan* identifying major project activities, deadlines for completing the activities and person(s) or institution(s) responsible for completing these activities that is linked to the *Logical Framework* matrix.

Please note that the abstract, table of contents, *Logical Framework* matrix, *Sustainability Plan*, and *Work Plan* are not included in the 45-page limit for the project design description.

Any applications that do not consist of the above-mentioned parts and conform to these standards will be deemed unresponsive to this solicitation and may be rejected. Any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand, mail, or electronically through www.grants.gov) by 4:45 p.m., Eastern Time, July 25, 2007 to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room S–4307, Washington, DC 20210, Attention: Ms. Lisa Harvey, Reference: Solicitation 07–10. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, Applicants bear the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-

Post Office to Addressee is the date entered by the Post Office clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service.

If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, Applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office. Confirmation of receipt can be obtained from Ms. Lisa Harvey (see section VII. for contact information).

Please Note: All Applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All Applicants must take this into consideration when preparing to meet the application deadline.

Applicants may also apply online at *http://www.grants.gov*. Applicants submitting proposals online are requested to refrain from mailing a hard copy application as well. It is strongly recommended that Applicants using *http://www.grants.gov* immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp*. These steps may take multiple days to complete, and this time should be factored into plans for electronic submission in order to avoid facing unexpected delays that could result in the rejection of an application. It is also recommended that Applicants using *http://www.grants.gov* consult the Grants.gov Web site's Frequently Asked Questions and Applicant User Guide, which are available at *http://www.grants.gov/help/faq.jsp*, and *http://www.grants.gov/assets/UserGuide_Applicant.pdf*, respectively.

If submitting electronically through *http://www.grants.gov*, Applicants must save the application document as a .doc, .pdf, .txt or .xls file. Any application received on *http://www.grants.gov* after the deadline will be considered as non-responsive and will not be evaluated.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Restrictions, Unallowable Activities, and Specific Prohibitions

USDOL–ILAB would like to highlight the following restrictions, unallowable activities, and specific prohibitions, as identified in OMB Circular A–122, 29 CFR Part 95, 29 CFR Part 98, and other USDOL policy, for all USDOL-funded child labor technical cooperation projects. If any Grantee has questions regarding these or other restrictions, consultation with USDOL–ILAB is recommended.

A. Pre-Award Costs

Pre-award costs, including costs associated with the preparation of an application submitted in response to this solicitation, are not reimbursable under the *Cooperative Agreement* (*see* also section VI.2.E).

B. Alternative Income-Generating Activities

USDOL funds awarded under all USDOL–OCFT *Cooperative Agreements* may not be used to provide micro-credits, revolving funds, or loan guarantees. Permissible costs related to alternative income-generating activities for parents and children may include, but are not limited to, vocational or skills training, incidental tools and equipment, guides, manuals, and market feasibility studies. USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities and to approve or disapprove these activities at any time after award of the *Cooperative Agreement*.

C. Direct Cash Transfers to Communities, Parents, or Children

As a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. Therefore, Grantees may not provide direct cash transfers to communities, parents, or children. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs,'' as defined in OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that proposed *direct beneficiaries* are no longer working in *exploitive child labor* and that these children have access to schooling, as part of the overall strategy to *withdraw children from*, and *prevent children from entering, exploitive labor*. Participant support costs are direct costs that may include such items as uniforms, school supplies, books, provision of tuition (i.e., in the form of stipends), and transportation costs. If approved by USDOL, these items are expected to be purchased or paid for directly by the Grantee or its subcontractor(s) in the form of vouchers, or payment to the service provider, as opposed to handing cash directly to children or other individuals. This insures that the money goes for its intended purpose and is not diverted or lost.

If Applicants propose the provision of participant support costs, they must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how the disbursement of funds will be administered in order to maximize efficiency and minimize the risk of misuse. The application must also address how participant support costs will be made sustainable once the project is completed.

D. Construction

Construction with funds under the *Cooperative Agreement* is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages Applicants to cost-share and/or leverage funds or in-kind contributions from communities and local organizations when proposing construction activities in order to ensure sustainability.

E. Subgrants

The funding for this program does not include authority for subgrants. Therefore, the Grantee may not subgrant any of the funds obligated under the *Cooperative Agreement.* Subgranting may not be included in the budget as a line item or in the text of the application. However, subcontracting may be included as a budget line item. Subcontracts must be awarded in accordance with 29 CFR 95.40–48 and are subject to audit, in accordance with the requirements of 29 CFR 95.26(d). Subcontracts awarded after the *Cooperative Agreement* is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

The determination of whether a Grantee's relationship with a subrecipient would constitute a subgrant or subcontract is determined primarily with reference to an agreement's general purpose, programmatic functions, and responsibilities given to the subrecipient. These three elements should be closely examined, together with the usual characteristics (terms and performance standards, scope of work, etc.). In case of doubt, consultations are expected to be held between USDOL and the Grantee with a view to ensuring proper determination of the particular agreement. As a reference tool in determining whether an agreement is a subgrant or a subcontract, see Appendix D. The table in Appendix D is for reference only and does not create any legally binding obligation.

See also section IV. I–K for related references on Grantee and subcontractor prohibitions related to Prostitution, Inherently Religious Activities, and Terrorism. In addition, the debarment and suspension rule, as outlined in 29 CFR 95.13 and 29 CFR 98, applies to all subcontracts issued under the *Cooperative Agreement*. Grantees are responsible for ensuring that all subcontractors meet this requirement. More detailed information on subcontracts may be requested by USDOL during the Best and Final Offer (BAFO) process.

F. Lobbying and Intent To Influence

Funds provided by USDOL for project expenditures under *Cooperative Agreements* may not be used with the intent to influence a member of the U.S. Congress, a member of any U.S. Congressional staff, or any official of any Federal, State, or Local Government in the United States (hereinafter ''government official(s)''), to favor, adopt, or oppose, by vote or otherwise, any U.S. legislation, law, ratification, policy, or appropriation, or to influence in any way the outcome of a political election in the United States, or to contribute to any political party or campaign in the United States, or for activities carried on for the purpose of supporting or knowingly preparing for such efforts. This includes awareness raising and advocacy activities that include fund-raising or lobbying of U.S. Federal, State, or Local Governments. (See OMB Circular A–122). This does not include communications for the purpose of providing information about the Grantees and their programs or activities, in response to a request by any government official, or for consideration or action on the merits of a federally-sponsored agreement or relevant regulatory matter by a government official.

COOPERATIVE AGREEMENT APPLICANTS CLASSIFIED UNDER THE INTERNAL REVENUE CODE AS A 501(c)(4) ENTITY (see 26 U.S.C. 501(c)(4)), MAY NOT ENGAGE IN ANY LOBBYING ACTIVITIES. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the U.S. Government is not eligible for the receipt of Federal funds constituting an award, grant, *Cooperative Agreement*, or loan.

G. Funds To Host Country Governments

USDOL funds awarded under *Cooperative Agreements* are not intended to duplicate existing foreign government efforts or substitute for activities that are the responsibility of such governments. Therefore, in general, Grantees may not provide any of the funds obligated under a *Cooperative Agreement* to a foreign government or entities that are agencies of, or operated by of for, a foreign state or government, ministries, officials, or political parties. However, subcontracts with foreign government agencies or entities that are agencies of, or operated by or for, a foreign state or government may be awarded to provide direct services or undertake project activities subject to applicable laws, but only after a competitive procurement process has been conducted and the Grantee has determined that no other entity in the country is able to provide these services. In such cases, Grantees must receive prior USDOL approval before awarding the subcontract.

H. Miscellaneous Prohibitions

In addition, USDOL funds may not be used to provide for:

- The purchase of land;
- The procurement of goods or services used for private purposes by the Grantee's employees;
- Entertainment, including amusement, diversion, and social activities and any costs directly associated with entertainment (such as tickets, meals, lodging, rentals, transportation, and gratuities). Costs of training or meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes reasonable costs of meals and refreshments, transportation, rental of facilities and other items incidental to such meetings and conferences. Costs related to child labor educational activities, such as street plays and theater, are allowable; and
- Alcoholic beverages.

I. Prostitution

The U.S. Government is opposed to prostitution and related activities which are inherently harmful and dehumanizing and contribute to the phenomenon of trafficking in persons. U.S. nongovernmental organizations (NGOs), and their subcontractors, cannot use funds provided by USDOL to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign-based NGOs, and their subcontractors, that receive funds provided by USDOL for projects to combat trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work while acting as a subcontractor on a USDOL-funded project. It is the responsibility of the Grantee to ensure its subcontractors meet these criteria, and this provision must be included in any applicable subcontract that the Grantee awards using USDOL funds and the Grantee will obtain a written declaration to that effect from the subcontractor concerned.

J. Inherently Religious Activities

The U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. The Grantee and/or its Associates may work with and subcontract with religious institutions; however, Federal funds provided under a USDOL-awarded *Cooperative Agreement* may not be used for religious instruction, worship, prayer, proselytizing, other inherently religious activities, or the purchase of religious materials. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of Grantees and must be employed by the Grantee and/or its Associates in the selection of subcontractors. This provision must be included in all subcontracts issued under the *Cooperative Agreement*. Any inherently religious activities conducted by the Grantee must be clearly separated in time or physical space from activities funded by USDOL. Additionally, *direct beneficiaries* of the project must have a clear understanding that their enrollment in a USDOL-funded project is not conditioned on their participation in any religious activities and a decision to not participate in any inherently religious activity will in no way impact, or result in any negative consequences to, their project standing. For additional guidance, please consult USDOL's Center for Faith-Based and Community Initiatives' Web site at *http://*

www.dol.gov/cfbci. In addition, for any matters of uncertainty, USDOL should always be consulted for prior approval.

K. Terrorism

Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. It is the policy of USDOL to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. Applicants responding to this solicitation and Grantees subsequently awarded funding by USDOL under this solicitation must check the following Web sites to assess available information on parties that are excluded from receiving Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404: *http://www.epls.gov/* and *http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf*.

This provision must be included in all applicable subcontracts issued under the *Cooperative Agreement*.

V. Application Review Information

1. Application Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate applications submitted in response to this Solicitation for Cooperative Agreement Applications. Applications will be evaluated on a 100 point scale. Applicants are required to address all of the following rating factors in their technical proposal: Project Design/Budget Cost-Effectiveness (40 points), Sustainability Plan (15 points), Organizational Capacity (25 points), and Key Personnel/Management Plan/Staffing (20 points). Applicants should note that additional points may be given to applications feasibly proposing: (a) To withdraw or prevent more than 200 children from *exploitive child labor* through the provision of *direct educational services* and *other project interventions* for every $100,000 in project funding awarded (Additional *Direct Beneficiaries* 5 points) and (b) To include committed non-Federal resources as described below in sections V.1.E. and V.1.F (Cost Sharing 5 points).

Please note that all information and requirements presented in section I.(3) Scope of Work and Appendix A: USDOL's Definitions of Key Terms will be taken into consideration when evaluating applications on the basis of the technical rating criteria outlined in this section. Applicants' cost proposals will be considered when evaluating the rating criteria Project Design/Budget Cost-Effectiveness/Budget Cost-Efficiency (see section V.A.iv. for further information on requirements related to Budget Cost-Effectiveness). When preparing the technical proposal, applicants must follow the outline provided in Appendix B and ensure that the technical proposal does not exceed the maximum length of 45 pages.

Project Design/Budget Cost-Effectiveness/ Budget Cost-Efficiency.	40 points.
Sustainability Plan	15 points.
Organizational Capacity	25 points.
Key Personnel/Management Plan/Staffing.	20 points.
Additional *Direct Beneficiaries*.	5 extra points.
Cost Sharing	5 extra points.

A. Project Design/Budget Cost-Effectiveness/Budget Cost-Efficiency (40 Points)

This part of the technical proposal constitutes the ''preliminary project design document'' and serves as the basis of the final *Project Document* to be submitted and approved by USDOL after *Cooperative Agreement* award. The Applicant's preliminary project design document must describe in detail the proposed approach to comply with the requirements listed below and be linked to a supporting *Logical Framework* matrix. The supporting *Logical Framework* matrix will not count in the 45-page limit, but should be included as an annex to the preliminary project design document. To guide Applicants, a sample *Logical Framework* matrix for a hypothetical USDOL child labor elimination project is available at: *http://www.dol.gov/ilab/grants/bkgrd.htm*.

i. Background and Justification

Applicants will be rated based on their knowledge and understanding of: (a) The child labor and education context in the country(ies) of interest and in the targeted sectors; (b) the issues, barriers, and challenges involved in providing education to children engaged in, or *at-risk* of engaging in *exploitive child labor*, as a strategy for ensuring their long-term *withdrawal* or *prevention* from such labor; (c) best-practice solutions to address their needs; and (d) the policy and implementing environment in the selected country (ies).

Additional factors for consideration include:

- Assessment of the incidence and nature of *exploitive child labor*, particularly the *worst forms of child labor*, in geographic area and/or sector(s) targeted, including hours of work, conditions of work, age and sex distribution of the target group, educational performance relative to other children, and if available, any research or data that might indicate correlations between educational performance and child labor;
- Identification of the sources of the relevant literature and documents used to analyze the child labor and educational context;
- Demonstrated familiarity with existing child labor, education and social welfare policies, plans and projects and the sector in which the children work, which Applicants are using to inform project design for proposed *direct beneficiaries*; and
- Demonstrated knowledge of other relevant programs as they pertain to child labor or education of proposed *direct beneficiaries* in Bolivia, Cambodia, Colombia, Democratic Republic of the Congo, the Dominican Republic, Indonesia, Morocco, the Philippines, Togo, and Uganda.

ii. Proposed Strategy

Applicants must discuss their proposed strategy to address the five goals of USDOL-funded child labor elimination projects outlined in section I.1, as well as their proposed strategy for ensuring *direct beneficiaries'* enrollment, *retention* in, and *completion* of, project-supported *direct educational services*. Applicants will be rated based on the quality and relevance of their proposed strategies.

The proposal must: (1) Identify how many children the Applicant expects to *withdraw from exploitive child labor* and *prevent from entering exploitive child labor* through the provision of *direct educational services* and *other project interventions*. Based on the specific cost-efficiency measures USDOL–OCFT has established with OMB, a minimum of 172 *direct beneficiaries* must be served for each $100,000 of project funding. Applications that propose to serve less than 172 *direct beneficiaries* per $100,000 of project funds will be considered non-responsive; (2) describe the specific gaps/educational needs of the children targeted by the project and explain how the project will address those gaps/needs/barriers of the children targeted; (3) provide detailed information on the forms of *direct educational services* that will be provided to the proposed *direct beneficiaries*, including the type(s) of educational and/or training programs in which the children will be enrolled, as well as the types of training opportunities and technical assistance that will be provided to project staff, host country nationals, community groups, and other stakeholders involved in the project; and (4) provide a detailed *Work Plan* that identifies major project activities, deadlines for completing these activities, and person(s) or institution(s) responsible for completing these activities. (The *Work Plan* may vary depending on what is the most logical form. It may, for example, be divided by project component, country, or region.)

Please Note: The number of children targeted for *withdrawal from exploitive child labor* and the number of children targeted for *prevention from exploitive child labor* should be reported separately. Applicants are strongly encouraged to propose a balanced number of children targeted for *withdrawal from exploitive child labor* with the number of children targeted for *prevention from exploitive child labor*. Detailed information on the proposed *direct beneficiaries*, including demographics, sectors of work, geographical location, type(s) of educational activities to be provided, type(s) of *other project interventions* to be provided, and other relevant characteristics and strategies must be provided. Applicants are strongly encouraged to begin providing *direct educational services* to at least one-quarter of the children being targeted for *withdrawal or prevention* (i.e. *direct beneficiaries*) during the first year of project implementation. Applicants should also provide information on how many children are expected to be *indirect beneficiaries* of the project (i.e., children benefiting solely from project interventions other than *direct educational services*).

To support their strategies, Applicants are encouraged to leverage project resources by collaborating with entities engaged in efforts that could contribute to the elimination of *exploitive child labor*, including efforts that promote children's access to educational and training opportunities and that address poverty—a major factor that increases the likelihood that children will engage in *exploitive child labor*. Applicants are also encouraged to include concrete commitments from business entities and individual business leaders to engage in partnerships to reduce child labor and increase educational opportunities for *direct beneficiaries*. Ideas for business involvement could include, but are not limited to the following: scholarships, donations of goods, mentoring and volunteering by employees, assistance in awareness raising, provision of internships for children/*youth* and/or teachers during vacation periods that would help them improve leadership, skills, and efficiency for implementing programs for children engaged in *exploitive child labor*.

Additional factors that will be considered include:

• Demonstrated knowledge of the school calendar and the requirements of basic, non-formal and vocational education systems to develop an approach that successfully enrolls children in educational programs with the shortest delay without missing an academic year or program cycle;

• The extent to which country-specific issues that could affect project results, including those outlined in section I.3., were meaningfully incorporated into the proposed strategy, either to increase opportunities for, or reduce obstacles to, successful implementation;

• Incorporation of the economic and social context of the target country in the proposed strategy, recognizing that approaches applicable in one target country may not be relevant to others;

• The creative and innovative nature of the Applicant's approach to promote policies and services that will enhance the provision of educational opportunities for children engaged in, or *at-risk* of entering, *exploitive child labor*;

• The extent to which the number of children targeted by the project is commensurate with the need in the geographical area and/or sector(s) where the project will be implemented, and how this number relates to the project's goals for broader impact in the country and/or sector(s);

• The feasibility and sensibility of the timeframes for the accomplishment of tasks and the proposed outcomes;

• The clarity and quality of the information provided in the *Work Plan*; and

• The extent to which the proposed approach will build upon existing activities, government policies, and plans, thereby avoiding needless duplication.

iii. Project Monitoring and Evaluation

Applicants must describe how management will ensure that: (1) All goals, objectives and deliverables of the project will be met; (2) information and data will be collected and used to demonstrate the impacts of the project; and (3) self-assessment, evaluation, and continuous improvement will occur (including a description of the systems that will be put in place for this purpose).

Applicants must design and implement a *project monitoring system* that allows for the monitoring of *direct beneficiaries'* work and educational status throughout the period of service provision (including type of work; working conditions, such as hours of work and hazardous conditions; and school attendance). Applications should describe in detail the methodology that will be used to monitor the above for all *direct beneficiaries* of the project. The proposal should identify who will be responsible for monitoring the children (i.e., teachers, project staff, community members, parents, employers), what data will be used (i.e., school attendance records, work attendance records, counseling information), and at what frequency (i.e., weekly, monthly, quarterly, semi-annually). Proposals must also describe the Grantee's quality control procedures, including how the Grantee will ensure that all implementers use the same definitions and reporting procedures and how the Grantee will conduct validation checks (i.e., sample-based checks, school and workplace site visits). In an effort to avoid duplication, build on existing synergies, and increase sustainability, projects should, to the extent possible, coordinate their *direct beneficiary monitoring* system with existing ILO-IPEC or other country-level monitoring systems. In cases where *direct beneficiaries* will complete their *direct educational service(s)* prior to the end of the project period, Applicants are encouraged to monitor and report on the work and education status of these *direct beneficiaries* beyond the period of service provision and ideally through the end of the project.

As project funds are often limited, the Grantee will need to identify the criteria that they intend to use to determine which children will receive *direct educational services* from the project. In addition, the Grantee will need to determine at what point in the provision of such services the project can reasonably and with confidence count a child as *withdrawn* or *prevented from exploitive labor*.

USDOL–OCFT has developed common indicators related to its child labor elimination projects: (1) The number of children *withdrawn* or *prevented* from *exploitive child labor* and provided education and/or training opportunities; (2) the number of countries with improved capacity to address child labor; and *direct beneficiaries'* (3) *retention* in and (4) *completion* of an education and/or training program. The first two indicators, as noted in section I.1., represent GPRA indicators for USDOL international child labor programming.

Further guidance on USDOL–OCFT's common indicators will be provided after award; thus, Applicants should focus their program management and performance assessment responses toward the development of their project's monitoring strategy to ensure children are: (a) *Withdrawn* or *prevented* from *exploitive child labor*; (b) provided a *direct educational service(s)*; (c) able to be retained in and complete their *direct educational service(s)*; and (d) able to remain out of *exploitive labor*. Due to the potentially significant links between hours worked, working conditions, and school performance, Grantees must collect information to track this correlation among its *direct beneficiaries*.

Applicants should describe their proposed internal project monitoring strategies for measuring their performance in meeting the five goals of USDOL's child labor elimination projects outlined in section I.1. and assessing the impact of proposed *direct educational services* on *direct beneficiaries* and *other project interventions* on *indirect beneficiaries*, including a limited number of additional key indicators of project performance. These indicators will serve as a basis for Grantees' Draft *Performance Monitoring Plan* (see section VI.4.E.).

Additional factors for consideration in the monitoring strategy include:

• The Applicant's plan for collecting baseline data; and

• The Applicant's proposed methodologies for evaluating the correlation between the type of work and conditions of work (including hours of work and workplace conditions) of *direct beneficiaries* and their school attendance and performance.

iv. Budget Cost-Effectiveness

This section will be evaluated on the basis of information contained in Applicants' cost proposals in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars). The requirements for cost proposals, including an *outputs-based budget*, are listed in section IV.2. A budget summary must be included in the application and must include a detailed breakdown of the Applicant's cost. In the detailed budget, Applicants must (a) show how the budget reflects program goals and design in a cost-effective way and (b) link the budget to the activities and outputs of the *Work Plan* discussed above. USDOL will evaluate Applicants on the degree to which the cost of activities will lead to the outputs they have identified. Consequently, Applicants should carefully construct their *outputs-based budget* to ensure that costs are both realistic and reasonable to achieve the results they propose. The evaluation of this section will focus on budget-performance integration, including the extent to which the budget supports a cost-effective plan for providing *direct educational services*. The link between the allocation of resources in the budget and the project's strategy should be evident.

The largest proportion of project resources should be allocated to *direct educational services* and activities aimed at targeted children, rather than direct and indirect administrative costs. Higher ratings may be given to Applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All projected costs should be reported, as they will become part of the *Cooperative Agreement* upon award. In their cost proposal (Part I of the application), Applicants must provide a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. The Grant Officer reserves the right to negotiate administrative cost levels prior to award.

In addition to calculating the number of *direct beneficiaries* that a project will serve per $100,000 of project funding, Applicants must also identify the cost per *direct beneficiary* for *withdrawal* or *prevention from exploitive child labor* based on the Applicant's package of *direct educational services* and *other project interventions*, as well as the monitoring of *direct beneficiaries'* work and educational status. In addition to providing the cost per *direct beneficiary*, Applicants must also provide an explanation of how such costs were calculated, and how they compare to the costs of similar services in the target country. When developing this calculation, Applicants should refer to the definitions of key terms presented in Appendix A.

This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables (see section VI.4.). The project budget must therefore include funds to plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); conduct studies pertinent to project implementation, including baseline studies; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington, DC or within the project's region (e.g., Africa, Asia/Pacific, Latin America, Caribbean, and Middle East and North Africa). Applicants based both within and outside the United States should budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL.

Applicants should set aside a total of at least USD 70,000 in the proposed budget to cover the costs of a mid-term and a final evaluation, including: (1) Labor costs, particularly those associated with hiring an independent external evaluator and other staff time; (2) costs associated with conducting a stakeholders' meeting, including meeting facilities, interpreters (if necessary) and travel costs of meeting participants; and (3) site visits including travel to and within the country (airfare, ground transportation, meals and lodging, interpreters (if necessary), etc.).

Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with data collection. This includes but is not limited to costs associated with meeting the reporting requirements discussed in section V.1.A.iii., including collecting and reporting on the common indicators (the number of children *withdrawn* or *prevented from exploitive child labor* and provided education and/or training opportunities, *countries with improved capacity to address child labor*, *direct beneficiaries' retention* in and *completion* of an education and/or training program), data management, and assessing the impact of *direct educational services* and *other project interventions* on proposed *direct beneficiaries* and the impact of *other project interventions* on *indirect beneficiaries*.

In addition, the budget should include a contingency provision, calculated at five percent of the project's total direct costs. USDOL will not provide additional funding to cover unanticipated costs. USDOL has determined that the use of contingency provision funds for USDOL-funded projects is essential to address circumstances affecting specific budget lines that relate to one or more of the following: (1) Inflation affecting specific project costs; (2) UN System or foreign government-mandated salary scale or benefits revisions; and (3) exchange rate fluctuations. USDOL also recognizes that certain extraordinary and unforeseen circumstances may arise that will lead to a need for exceptions to the aforementioned uses of contingency provision funds, related to the need for modifications to budgets or time extensions. These include but are not limited to the following: (1) Changes in a country's security environment; (2) natural disasters, (3) civil or political unrest/upheavals or government transitions; or (4) delays related to loss of or damage to project property.

Applicants are also instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the Applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

Additional factors that will be considered in evaluating the proposed project budget include:

- The reasonableness and realism of prices/costs suggested in the budget;
- The extent to which the proposed budget takes into account the type of work in which the proposed *direct beneficiaries* are currently engaged;
- Demonstration, to the extent possible, that the proposed cost-efficiencies are designed to withdraw or prevent as many children from *exploitive child labor* as possible through *direct educational services* that support their enrollment in educational activities.

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this *Cooperative Agreement.* While USDOL encourages host governments to not apply customs or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

Note to Applicants: After award, Grantees must obtain *prior* approval from USDOL before using unobligated contingency or evaluation funds. Twelve months before the project ends, after calculating the amounts needed for cost increases in the remaining life of the project, forecasted remaining funds in the contingency provision funds may be used to augment the number of beneficiaries or increase the provision of services to existing *direct beneficiaries* (under the age of 18). Increased services must be provided if they relate directly to *retention* in and *completion* of a *direct educational service*, to an improvement in academic performance, and/or the job placement of *direct beneficiaries* of legal employment age who are involved in vocational or skills training programs.

B. Sustainability Plan (15 Points)

USDOL considers the issue of sustainability to be of paramount importance and recognizes that questions of sustainability must be addressed at all stages, including Project Design, implementation, and evaluation. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families, this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and schooling. The issue of sustainability is extremely complex and challenging. It demands careful definition in each project, according to the objectives to be attained. Distinctions are expected to be made between different types of sustainability (e.g., institutional and financial) and it is recognized that these differences may affect the likelihood of sustaining project improvements (e.g., legislative and policy oriented projects, as well as those focusing on institutional strengthening, have a greater potential for achieving sustainability than other types of projects).

Applicants must discuss a proposed plan for sustainability of project efforts, taking into account the definition of *Sustainability Plan* provided in Appendix A. Applicants must also identify local organizations in the target country, including type (e.g., NGO, community-based, rural, indigenous), which could potentially implement or contribute to a future project. In addition to the above factors, Applicants will be rated based on the pertinence and appropriateness of the proposed *Sustainability Plan.* A sample *Sustainability Plan*/Matrix is available from USDOL–ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.*

C. Organizational Capacity (25 Points)

Under this criterion, Applicants must present the qualifications of the organization(s) implementing the project. The evaluation criteria in this category are as follows:

i. International and U.S. Government Grant Experience

Applicants must have international experience implementing basic, transitional, non-formal, or vocational education programs that aim to *withdraw* or *prevent* children from *exploitive labor* and address issues of educational access, quality, and policy reform for vulnerable children, preferably in the country of interest.

The application must include information on the Applicant's previous and current grants, *Cooperative Agreements*, or contracts with USDOL and other Federal agencies that are relevant to this solicitation, including:

1. The organizations for which the work was done;
2. A contact person in that organization with his/her current phone number;
3. The dollar value of the grant, contract, or *Cooperative Agreement* for the project;
4. The time frame and professional effort involved in the project;
5. A brief summary of the work performed; and
6. A brief summary of accomplishments.

This information on previous grants, *Cooperative Agreements*, and contracts held by the Applicant must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an Applicant, but also information from USDOL and others regarding past performance of organizations implementing USDOL-funded child labor and EI projects, or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and *Cooperative Agreement* or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, *Cooperative Agreements*, grants, or contracts is not a bar to eligibility or selection under this solicitation.

ii. Country Presence and Host Government Support

Given the need to provide children engaged in *exploitive labor,* particularly the *worst forms of child labor*, with immediate assistance in accessing educational and training opportunities, Applicants will be evaluated on their ability to start up project activities soon after signing a *Cooperative Agreement.* Having country presence, or partnering with in-country organizations, represents the best chance of expediting the delivery of services to children engaged in, or *at-risk* of entering, *exploitive child labor.* In their application, Applicants must address their organization's country presence; ability to work directly with government and NGOs, including local and community-based organizations; and ability to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and nongovernmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, a Grantee, either independently or through a relationship with another organization(s) with country presence (i.e., an *Association* member or subcontractor), must be formally recognized by the host government(s) using the appropriate mechanism, i.e., Memorandum of Understanding or local registration of the organization.

iii. Fiscal Oversight

Applicants will be evaluated on their ability to provide evidence that the organization has a sound financial system in place. If the Applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the Applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that the Applicant has complied with report submission timeframes established in OMB Circular A–133. If an Applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected. If the Applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, Associates and subcontractors that are subject to the Single Audit Act. If the proposed Associate(s) or partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment.

If the audit submitted by the Applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected. USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

In order to expedite the screening of applications and to ensure that the appropriate audits are attached to the proposals, Applicants must provide a cover sheet to the audit attachments listing all proposed Associates and subcontractors. These attachments will not count toward the application page limit.

D. Key Personnel/Management Plan/Staffing (20 Points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the Applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to ensure that they meet the required qualifications.

Management and professional technical staff members comprising the Applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform the work specified in the Scope of Work. Where *Associations,* subcontractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure effective implementation and responsiveness to the needs of USDOL.

In order to promote and increase national and local capacity, USDOL encourages the hiring of qualified national experts. USDOL also encourages Applicants to consider staffing strategies that aim to develop capacity of national staff over the course of the project as part of a contribution to the development of national capacity for combating exploitive child labor. Preference may be given to Applicants who propose such strategies which are determined to be effective.

i. Key Personnel

Applicants must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''Key personnel'' are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) that are essential to the successful operation of the project and completion of the proposed work.

(1) The Project Director will be responsible for overall project management, supervision, administration, and implementation of the requirements of the *Cooperative Agreement.* The Project Director will establish and maintain systems for project operations; ensure that all *Cooperative Agreement* deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of child labor and complex *basic education* projects in developing countries in areas such as: education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of *basic education* for disadvantaged children; and monitoring and evaluation of *basic education* projects. Additional consideration will be given to candidates with additional years of experience including experience working with officials of ministries of labor and/or education. Preferred candidates must also have knowledge of *exploitive child labor* issues, and experience in the development of transitional, formal, and vocational education programs for children removed from *exploitive child labor.* Fluency in English is required and working knowledge of at least one of the official languages of the target country is strongly suggested.

(2) The Education Specialist will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in *basic education* projects in developing countries in areas including student assessment, teacher training, educational materials

development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with *exploitive child labor*/education policy and monitoring and evaluation is an asset. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(3) The Monitoring and Evaluation Officer who will oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, database management, and knowledge of the GPRA. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

The application must include a résumé, as well as a description of the roles and responsibilities of all key and other professional personnel (as described below) being proposed by the Applicant. At a minimum, each résumé must include the following:

- The educational background and previous work experience for each key and other professional personnel to be assigned to the project, including position title, duties, dates, employing organizations, and clearly defined duties;
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts; and
- The current employment status of key personnel and availability for this project.

Applicants must also indicate whether the proposed work will be performed by persons currently employed by the applying organization(s), and if so, for how long, or is dependent upon planned recruitment or subcontracting.

Applicants must also include a completed salary history form SF 1420 for each key personnel candidate in their application. This form is available from the U.S. Agency for International Development's Web site at: *http://www.usaid.gov/forms/AID1420-17.doc.* A link to this form is also available on USDOL's Web site: *http://www.dol.gov/ilab/grants/bkgrd.htm.*

All key personnel must allocate 100 percent of their time to the project and live in the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project and indicate their availability to commence work within 30 calendar days of the *Cooperative Agreement* award. In addition, if either the Education Specialist or Monitoring and Evaluation Officer are not fluent in English, the project must assume responsibility for ensuring that key personnel have a clear understanding of USDOL policies and procedures and that all documents produced by key staff for submission to USDOL are in fluent English.

Please Note: If key personnel candidates are not designated, or if letters of agreement to serve on the project or résumés are not submitted as part of the application for each key personnel candidate, the application will be considered unresponsive and will be rejected.

The letters of agreement, résumés, and salary history forms (SF 1420) must be submitted as attachments to the application and will not count toward the page limit.

Key personnel must be employed by the Grantee, not a subcontractor. In the case of an *Association,* the project director must be employed by the Lead Grantee. In cases of *Associations* where Applicants propose that key personnel would not all be employed by the Lead Grantee, a clear indication of the following must be provided in the application: the rationale for dividing key personnel among the *Association* members, lines of authority among key personnel and other staff, the process of supervision and evaluation of personnel who are not members of the same organization, the process by which all parties would come to agreement on key implementation issues, and mechanisms of conflict resolution should the need arise

ii. Other Professional Personnel

Applicants must identify other program personnel deemed necessary for carrying out the requirements of this solicitation. Applicants must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization(s) or is dependent upon planned recruitment or subcontracting.

iii. Management Plan

Applicants will be rated based on the clarity and quality of the information provided in the management plan. The plan must include: (a) A description of the functional relationship between elements of the project's management structure; and (b) the responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

iv. Staff Loading Plan

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including Association member staff, subcontractors, and consultants. All key tasks should be charted to show the time required to perform them by months or weeks.

E. Additional *Direct Beneficiaries* (5 Extra Points)

As noted above, Applicants are required to serve a minimum of 172 *direct beneficiaries* for each $100,000 of project funding, in line with the specific cost-efficiency measures USDOL–OCFT has established with OMB.

Applicants may receive up to 5 additional rating points by proposing to effectively serve more than 200 *direct beneficiaries* per $100,000 of project funding. Please note that the proposed strategy must reflect appropriate services and monitoring mechanisms to ensure children are *withdrawn from*, or *prevented from entering*, *exploitive child labor* and are benefiting from a *direct educational service* provided by the project.

F. Cost Sharing (5 Extra Points)

USDOL will give up to five (5) additional rating points to applications that include committed non-U.S. Federal Government resources that significantly expand the dollar amount, size and scope of the project. In awarding points, USDOL will determine whether the Applicant's proposal to share costs or provide matching funds is allowable and realistic within the context of proposed strategy. These programs or activities must complement and enhance project objectives. To be eligible for the additional points, Applicants must list the source(s) of funds, the nature, and possible activities anticipated with these resources under this *Cooperative Agreement.* For additional information on requirements associated with this rating criteria, see section III.3.

1. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in section IV.2. above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement Services will send a letter to the Applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

1. A cost proposal;
2. A technical proposal, including the *Logical Framework* and *Work Plan*;
3. The Applicant's most recent audit report, and those of any proposed Associates or subcontractors (as applicable);
4. Résumés of all key personnel and other professional personnel;
5. Signed letters of agreement to serve on the project from all key personnel candidates;
6. Information on the Applicant's previous and current grants, *Cooperative Agreements*, or contracts with USDOL and other Federal agencies that are relevant to this solicitation; and
7. Signed *Association* agreement(s), if applicable.

Each *complete and responsive* application will be objectively rated by a technical review panel against the criteria described in this solicitation. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission or the Grant Officer may establish a competitive or technically acceptable range from which qualified Applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a potential *Cooperative Agreement* recipient does not constitute approval of the *Cooperative Agreement* application as submitted. Before the actual *Cooperative Agreement* is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support *Cooperative Agreement* implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. In addition, USDOL reserves the right to negotiate program components further after award, during the *project design consolidation phase* and *Project Document* submission and review process. See section VI.4.A.

Award of a *Cooperative Agreement* under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

2. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. USDOL is not obligated to make any awards as a result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the *Cooperative Agreement*, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any *Cooperative Agreement* requirements and/or procedures.

VI. Award Administration Information

1. Award Notices

The Grant Officer will notify Applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a *Cooperative Agreement* and USDOL–OCFT's 2007 Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation. However, organizations not designated must formally request a debriefing in order to be provided with the basic reasons for the determination.

Notification of designation by a person or entity other than the Grant Officer is not valid.

2. Roles and Responsibilities of USDOL and Grantees

After award, USDOL's involvement in a project focuses on working with the Grantee in order to refine the Project Design/*Project Document* and its corresponding budget; to identify project performance indicators and develop a *Performance Monitoring Plan (PMP)*; to monitor implementation through technical and financial progress reports; and to oversee the process of mid-term and final project evaluations. USDOL involvement is generally characterized by written comments and oral feedback tied to the approval of deliverables outlined in the *Cooperative Agreement*. USDOL staff may also conduct field visits to the project.

Applicable provisions, including those provided for in the USDOL *Cooperative Agreement* with the Grantee, apply to subcontracts entered into under USDOL-funded projects.

3. Administrative and National Policy Requirements

A. General

Grantees are subject to applicable U.S. Federal laws (including provisions of appropriations laws) and regulations, Executive Orders, applicable OMB Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. Government laws and regulations, the terms of the *Cooperative Agreement* awarded under this solicitation may be modified by USDOL; costs may be disallowed and recovered; the *Cooperative Agreement* may be terminated; and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

B. Project Audits and External Auditing Arrangements

Applicants are reminded to budget for compliance with annual single audits or attestation engagements as applicable (see below). Costs for these audits or attestation engagements must be included in direct or indirect costs, whichever is appropriate, in accordance with the cost allocation procedures approved by the U.S. Federal cognizant agency. Please note the following requirements:

i. U.S.-based non-profit Grantees whose total annual expenditure of Federal awards is more than $300,000 (more than $500,000 for fiscal years ending after December 31, 2003) must have an organization-wide audit conducted in accordance with 29 CFR parts 96 and 99, which codify the requirements of the Single Audit Act and OMB Circular A–133, and must comply with the timeframes established in those regulations for the submission of their audits to the Federal Audit Clearinghouse. Grantees must send a copy of their single audit to their assigned USDOL Grant Officer's Technical Representative (GOTR) at the time it is submitted to the Federal Audit Clearinghouse.

Please Note: USDOL generally allows the costs to be allocated based on the following (applicable to U.S.-based agencies only): (1) A–133 ''single audit'' costs as part of the indirect cost rate/pool for organizations with *more than* one Federal source of funding. Organizations with only one Federal source could charge the A–133 single audit cost as direct costs; (2) A–133 ''*compliance supplement*'' costs—as direct costs for Federal sources only through a cost allocation methodology approved by the Federal cognizant agency; or (3) A–133 *program specific* audits as direct costs. Any deviations from the above must be explained and justified in the application.

ii. Foreign-based Grantees and private for-profit Grantees that are awarded a *Cooperative Agreement* under this solicitation must arrange for the annual performance of an attestation engagement, conducted in accordance with U.S. Government Auditing Standards, which includes auditor's opinions on (1) compliance with USDOL regulations and the provisions of the *Cooperative Agreement*, and (2) the reliability of the Grantee's financial and performance reports. USDOL will provide an examination guide to be used by the auditor selected by the Grantee to perform the attestation engagement and will provide assistance in the event a Grantee is unable to identify an audit firm qualified to perform an attestation engagement in accordance with U.S. Government Auditing Standards. The Grantee's contract with the auditor to conduct the attestation engagement must include provisions granting access to the auditor's documentation (work papers) to representatives of USDOL, including the Grant Officer, the GOTR, and USDOL's Office of the Inspector General. The reports for these engagements are to be submitted to the Grant Officer with a copy to the GOTR: (1) 30 days after receipt of the auditor's report, or (2) nine months after the end of the Grantee's fiscal year, whichever occurs sooner. Please note that the attestation engagement should be allocated as a direct cost to the project.

In accordance with 29 CFR parts 96 and 99, USDOL has also contracted with an independent external auditor to conduct project-specific attestation engagements at USDOL's expense to supplement the coverage provided by the audits/engagements that Grantees must arrange. Grantees scheduled for examination by USDOL's contractor shall be notified approximately two to four weeks prior to the start of the engagement.

C. Administrative Standards and Provisions

Cooperative Agreements awarded under this solicitation are subject to the following administrative standards and provisions outlined in the CFR that pertain to USDOL, and any other applicable standards that come into effect during the term of the *Cooperative Agreement,* if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Copies of all regulations referenced in this solicitation are available at no cost, online, at *http://www.dol.gov*. A copy of Title 29 of the CFR referenced in this solicitation is available at no cost, online, at *http://www.dol.gov/dol/allcfr/Title_29/toc.htm*.

Grantees should be aware that terms outlined in this solicitation, the *Cooperative Agreement,* and the MPGs are all applicable to the implementation of projects awarded under this solicitation.

D. Key Personnel

As noted in section V.1.D., Applicants must list all Key Personnel candidates. The Grantee must inform the GOTR in the event that key personnel cannot continue to work on the project as planned. The Grantee is expected to nominate, through the submission of a formal project revision, new personnel. (Further information on project revisions will be provided to Grantees after award). However, the Grantee must obtain approval from the Grant Officer before any change to key personnel is formalized. If the Grant Officer is unable to approve the personnel change, s/he reserves the right to terminate the *Cooperative Agreement* or disallow costs.

E. Encumbrance of Cooperative Agreement Funds

Cooperative Agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the *Cooperative Agreement* period may be liquidated (paid out) after the end of the *Cooperative Agreement* period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the *Cooperative Agreement* period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the *Cooperative Agreement* period. All encumbrances/obligations incurred during the *Cooperative Agreement* period must be liquidated within 90 calendar days after the end of the *Cooperative Agreement* period, unless a longer period of time is granted by USDOL.

Federal Regulations require Grantees to submit annually an inventory listing of federally-owned property in their custody to USDOL. See 29 CFR 95.33(a). Such property must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee are expected to determine how to best allocate such, and other, property in order to promote sustainability of efforts in the project's implementing areas.

F. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. USDOL intends to make every effort to notify the Grantee at least two weeks in advance of any trip to the USDOL-funded project site. If USDOL makes any site visit on the premises of a Grantee or a subcontractor(s) under the *Cooperative Agreement,* the Grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner designed to not unduly delay the implementation of the project.

4. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo independent evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the *Cooperative Agreement*. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the *Cooperative Agreement* and the MPGs.

Specific deliverables include the following:

A. Project Document

Within 90 calendar days of project award, the Grantee must deliver an initial draft of the *Project Document,* based on the application submitted in response to this solicitation and including the results of additional consultations with project stakeholders, government officials in the target country(ies), local partners, and USDOL. Within 180 calendar days of project award, the Grantee must deliver the final *Project Document,* which must include dates for the mid-term and final evaluations, the *Logical Framework (logframe),* initial *Sustainability Plan*; and *Work Plan*. In addition, Applicants proposing to issue government subcontracts must submit a table of all proposed government subcontracts that includes activities to be carried out and a justification for why the government is the most suitable party to carry out the proposed activities.

B. Baseline Data Collection

Within 180 calendar days of award, and prior to the finalization of the *Project Document*, USDOL expects Grantees to conduct baseline data collection. Baseline data and information measures the existing conditions of target areas or sectors and provides information on the characteristics of the target population, including their living and working conditions. The data should be used to: (1) Develop reliable project targets and identify project beneficiaries and (2) inform project design and formulate activities including the identification of relevant services to children and possible stakeholders. When designed with additional periodic data collection exercises, baseline data can be used to establish benchmarks and contribute to the measurement of project impact. Information can then be used to inform management decisions throughout the project cycle.

C. Technical Progress and Financial Reports

The format for the technical progress reports will be provided in the MPG distributed to Grantees after the award. Grantees must submit a typed technical progress report to USDOL on a semi-annual basis by 31 March and 30 September of each year during the *Cooperative Agreement* period. However, USDOL reserves the right to require up to four technical progress reports a year, as necessary. Grantees must also submit a quarterly financial report (SF 269) electronically to USDOL through the E-Grants system, and a Federal Cash Transactions Report (PSC 272) to the HHS–PMS.

D. Work Plans

Within 90 calendar days of award, the Grantee must deliver an initial draft of the *Work Plan,* for the life of the project. Grantees must develop a final *Work Plan* within 180 calendar days of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. The final *Work Plan* must include dates for the mid-term and final evaluations. An annual *Work Plan* that updates the initial *Work Plan* must be submitted to USDOL annually with the September technical progress report.

E. Performance Monitoring Plan

Within 180 calendar days of award, the Grantee must submit a draft *PMP* to USDOL. The *PMP* must be developed in conjunction with the *Logical Framework* project design and common indicators for reporting selected by USDOL. The plan must include a limited number of additional key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection (as referenced in section VI.4.B. is expected to be tied to the indicators of the *Project Document* and the *PMP*. The final *PMP* must be submitted after completion of baseline data collection but no later than one year after award. (See background materials available on OCFT's Web site *http://www.dol.gov/ilab/grants/bkgrd.htm* for a sample *PMP*.)

F. Project Evaluations

As specified in the *Cooperative Agreement,* mid-term and final evaluations must take place for the project. The Grantee must include a line item in the budget for funding these evaluations. Mid-term and final evaluations are generally conducted by an independent contractor. When developing Evaluation Plans, Grantees are expected to tentatively schedule mid-term evaluations to correspond with the approximate mid-point of the project. The date of the final evaluation is expected to be tentatively set for approximately two months prior to the project completion date.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room S–4307, Washington, DC 20210; telephone (202) 693–4570 (please note that this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*. For a list of frequently asked questions on USDOL's Solicitation for Cooperative Agreements, please visit *http://www.dol.gov/ILAB/faq/faq36.htm*.

VIII. Other Information

1. Coordination With the ILO/IPEC, Other USDOL Grantees, and Other U.S. Government-Funded Projects

Recognizing the important work of ILO/IPEC in reducing *exploitive child* *labor* worldwide, and USDOL's substantial funding and support for this organization, Grantees are encouraged to establish good relationships with ILO and IPEC-specific field offices and other U.S. Government-funded projects such as those supported by U.S. Embassies, the U.S. Department of State's Global Trafficking in Persons (GTIP) Office, and the U.S. Agency for International Development (USAID) in the country (ies) where they work. Similarly, USDOL intends to inform Grantees of other organizations that are working on related issues in countries with USDOL-funded projects. Establishing a productive working relationship with these organizations is especially important to avoid duplication of efforts and to build synergies between organizations working in the same issue area. Grantees must also become familiar with standard concepts and definitions regarding child labor that are currently used by the ILO, including Convention 138 and Convention 182 and their accompanying recommendations.

2. Privacy and Freedom of Information Act

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 11th day of June, 2007.

Lisa Harvey,

Grant Officer.

Appendix A: USDOL's Definitions of Key Terms

Acceptable Work: Work that is performed by children of legal working age, in accordance with national legislation and international standards, namely the International Labor Organization (ILO) Conventions 138 and 182; work that is non-exploitive and non-hazardous and does not prevent a child from receiving the full benefit of an education. *Acceptable work* would generally include, for example, light work that is compatible with national minimum age legislation and education laws.

Association: An *Association* is a partnership of more than one organization that becomes a Grantee of USDOL. An *Association* is comprised of two or more organizations that do not constitute a single legal entity but join in applying for an award under this solicitation. Each member of the Association must be individually eligible for the award, and must sign, and agree to be bound jointly and severally by the *Cooperative Agreement.* The *Association* must designate one Associate as the *Lead Grantee.* Specific obligations of the Lead Grantee are included in the *Cooperative Agreement.* All references in this solicitation to ''Applicant(s)'' and ''Grantee(s)'' apply to *Associations* as well as individual Applicants.

At-risk: An *at-risk* situation refers to a set of conditions or circumstances (family environment or situation, proximity to economic activities prone to employ children, etc.) under which a child lives or to which it is exposed which make it more likely that the child will be in employed in *exploitive child labor.* A project-specific definition of ''*at-risk,*'' clearly articulating the defining characteristics of the proposed *direct beneficiaries,* must be provided with the application, though this definition may be refined after award in the *Project Document* as a result of baseline data collection. For example, siblings of children formerly engaged in *exploitive labor* could be considered ''*at-risk.*''

Basic Education: This comprises both formal schooling (primary and sometimes lower secondary) as well as a wide array of non-formal and informal public and private educational activities offered to meet the defined basic learning needs of groups of people of all ages. (Source: UNESCO, Education for All: Year 2000 Assessment: Glossary [CD–ROM], Paris, 2001.

Child: For the purposes of this solicitation, *a child* is considered to be an individual under the age of 18 years. This category includes older *children*, ''*youth*,'' under the age of 18 years.

Child Labor (see definition of *Exploitive Child Labor*).

Child Labor Monitoring System (CLMS): CLMS involves the identification, referral, protection and prevention of *exploitive child labor* through the development of a coordinated multi-sector monitoring and referral process that aims to cover all children living in a given geographical area, not just those that are *direct beneficiaries* of a project. The principle activities of a *CLMS* include regularly repeated direct observations to identify child laborers and to determine risks to which they are exposed, referral of these children to services, verification that they have been removed and tracking them afterwards to ensure that they have satisfactory alternatives.

Children Prevented from Entering Exploitive Labor (a common indicator): This comprises part of one of USDOL–OCFT's GPRA Indicators and refers to children not yet engaged in *exploitive child labor* but who are considered to be *at-risk* of entering such labor, for example, siblings of former working children. In order to be considered as ''*prevented,*'' these children must also have benefited or be benefiting from a *direct educational service* provided by the project. USDOL considers children *prevented from entering exploitive labor* and children *withdrawn from exploitive labor* to be mutually exclusive categories. (For more information on GPRA, see section I.1. Background: USDOL Support for the Global Elimination of *Exploitive Child Labor*).

Children Withdrawn From Exploitive Labor (a common indicator): This comprises part of one of USDOL–OCFT's GPRA Indicators and refers to those children who were found to be working in *exploitive child labor* and no longer work under such conditions as a result of a direct project intervention. This category includes:

(a) Children who have been completely withdrawn from work, which is required by ILO Convention 182 for forms (a)–(c) of Article 3, and

(b) Children who were involved in *hazardous work* (Article 3(d) of C.182) or work that impedes a child's education (ILO Convention 138) but are no longer due to improved working conditions (i.e., fewer hours or safer workplaces) or because they have moved into a new, acceptable form of work (i.e. *acceptable work*).

To be considered as *withdrawn from exploitive child labor*, each child must also have benefited or be benefiting from a *direct educational service* provided by the project. USDOL considers children *withdrawn from exploitive labor* and children *prevented from entering exploitive labor* to be mutually exclusive categories.

Completion (a common indicator): The percentage of children withdrawn/prevented through a USDOL-supported educational or training program who complete the program(s).

Cooperative Agreement: A Cooperative Agreement is a form of a grant where substantial involvement is anticipated between the donor (USDOL) and the Grantee during the performance of the proposed activities. The level of monitoring and accountability required by USDOL under a Cooperative Agreement is less than what is required in a contract, but more than in a regular grant.

Direct Beneficiaries: Children and *youth* who, as a result of a USDOL-funded project, are (a) *withdrawn from*, or *prevented from entering, exploitive child labor* AND (b) are provided with a *direct educational service* that results in their enrollment in at least one of the four categories of educational activities listed below under the definition of *direct educational service.*

Direct Beneficiary Monitoring (see *Project Monitoring System*).

Direct Educational Service(s): Direct Educational Services may involve either:

(a) The provision of at least one of the following educational activities:

(1) Non-formal or basic literacy education—This type of educational activity may include transitional, levelling, or literacy classes so that a child may either be mainstreamed into formal education and/or can participate in vocational training activities;

(2) Vocational, pre-vocational, or skills training—This type of training is designed to develop a particular, marketable skill (e.g., mechanics, sewing); or

(b) The provision of goods and/or services (if lack thereof is a barrier to education) that meets the specific needs of the proposed *direct beneficiaries* and results in their enrollment or in at least one of the four categories of educational activities listed below. Examples of goods and/or services that may meet the specific gaps/educational needs of targeted children include tutoring, school meals, uniforms, school supplies and materials, books, tuition and transportation vouchers, or other types of incentives. The four categories of educational activities that qualify are:

(1) Non-formal or basic literacy education;

(2) Vocational, pre-vocational, or skills training;

(3) Formal education—This is defined as the formal school system within the target country; or

(4) Mainstreaming—This type of educational activity involves a project transitioning children from non-formal education into the formal education system. Generally, mainstreaming involves the provision of goods and/or services that may assist in placement testing and enable a child to attend and stay in school.

Exploitive Child Labor: This term refers to the *worst forms of child labor* outlined in ILO Convention 182, including work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children; all other types of work by children in violation of national labor laws and international standards, such as ILO Conventions 138 and 182; and work that prevents a child from obtaining an education or impede a child's ability to learn as outlined in ILO Convention 138. (See ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm* for a visual presentation of the categories of *exploitive child labor*).

ILO Convention 182, Article 3, defines the *worst forms of child labor* as comprised of:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(b) The use, procuring or offering of a child for prostitution, the production of pornography or for pornographic performances;

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Convention 138, Minimum Age Convention, Article 7.1(b) is also used to identify *exploitive child labor.* Article 7.1(b) states that children within a particular age range shall not participate in work that will ''prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.''

Exploitive Labor: (see definition of *Exploitive Child Labor*).

Hazardous Work: This term refers to work that falls under Article 3(d) of ILO Convention 182. ILO Recommendation 190, which accompanies ILO Convention 182 on the Worst Forms of Child Labor, gives additional guidance on identifying *hazardous work.* Applicants are encouraged to consult Recommendation 190. ILO Recommendation 190 states in Section II. *Hazardous work*, paragraph 3, ''In determining the types of work referred to under Article 3(d) of the Convention [ILO Convention 182], and in identifying where they exist, consideration should be given'' to:

(a) Work which exposes children to physical, psychological or sexual abuse;

(b) Work underground, under water, at dangerous heights or in confined spaces;

(c) Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

In some cases, the work conditions of children involved in *hazardous work* may be improved so as to make the work conditions acceptable for children. This may include, for example, reducing hours of work or changing the type of work children perform (i.e., disallowing children in agriculture from working with heavy machinery or pesticide applications). However, conditions can only be improved for children who are legal to work according to the specific laws of the target country(ies). If, for example, a child is 9 years old and working in *hazardous work* in a country whose minimum age is 15 years, this child should be completely *withdrawn from child labor* since conditions cannot be improved to make it legally acceptable for the child to work.

Indirect Beneficiaries: Individuals who do not receive a *direct educational service* provided by the project but who benefit as a result of a project activity, such as awareness raising efforts, support for policy change, or institutional capacity building. These individuals do not qualify as *direct beneficiaries.*

Improved Country Capacity To Address Child Labor (a common indicator): This is one of USDOL–OCFT's GPRA Indicators (see section I.1. for more information on GPRA) and can be demonstrated if one or more actions listed below took place in the target country(ies) under one of the following four fields:

1. The adaptation of the legal framework to international standards.

- List of *hazardous work* activities for children approved or revised after tripartite consultation (among government, employer, and employee representatives) and officially adopted (e.g. through law, presidential decree, etc.);
- Adaptation of labor code or education laws to include or modify child labor-related issues;
- Adaptation of criminal code to include or modify child labor-related issues;
- Adaptation of existing legislation concerning child labor or education to put it in line with Conventions 138 or 182; or
- Approval of new legislation concerning specific forms of child labor.

2. The formulation of specific policies and programs at the national, regional, or sectoral level within a country dealing with *exploitive child labor.*

Progress in this field can be demonstrated by the development of a policy, plan or program document on the *worst forms of child labor*, a specific *worst form of child labor*, or *basic education* reforms which address the *worst forms of child labor* by one or more of the following entities:

- The Government (at any level);
- The National Steering Committee; or
- Social Partners.

3. The inclusion of child labor concerns in relevant development, social and anti-poverty policies and programs

- The elimination of child labor, including through *basic education* reform that benefits child labor elimination, has been included as an explicit objective in poverty reduction, development, educational, or other social programs;
- Child labor was included as an indicator in poverty reduction, development or educational strategies, etc. (e.g., UN Development Assistance Framework (UNDAF), Poverty Reduction Strategy Paper (PRSP), Education for All (EFA), Millennium Development Goals (MDG));
- Child laborers have been considered as a priority target group in the poverty reduction, development or educational strategies, etc.; or
- Ensuring that children go to school and do not work has been set as *a condition* for families that wish to benefit from social and stipends programs

4. The establishment of a *child labor monitoring system (CLMS)* Progress in this field can be demonstrated if one or several of the following systems has been established and is in operation:

- A *CLMS* covering various forms of child labor at the national level;
- A *CLMS* covering various forms of child labor at the local level:
- A *CLMS* in any formal or informal sector, urban or rural; or
- A comprehensive plan and/or pilot program to develop and establish national, local or sector specific *CLMS.*

The characteristics of a comprehensive and credible *CLMS* can include the following:

- The system is focused on the child at work and/or in school;
- It involves all relevant partners in the field, including labor inspectors if appropriate;
- It uses regular observation to identify children in the workplace;
- It refers identified children to the most appropriate alternative to ensure that they are withdrawn from *hazardous work*;
- It verifies whether the children have actually shifted from *hazardous work* to an appropriate situation (school or other); and
- It keeps records on the extent and nature of child labor and the schooling of identified child workers.

Logical Framework (Logframe): A tool that summarizes project design. The *logframe* is a matrix that clearly documents the logic and causal linkages underlying an Applicant's strategy. In developing a *logframe*, Applicants should document how activities will lead to outputs (intermediate results), which, taken together, will lead to the achievement of the project's purpose. The purpose is the overall result for which the project will be held accountable. The *logframe* matrix also includes a contextual goal that reflects the broader societal issue that the project hopes to influence. In addition to requiring Applicants to provide a narrative summary of this hierarchy of results (activities-outputs-purpose-goal), the *logframe* also requires the project to list performance indicators for each result and the means by which those indicators will be measured. Applicants are expected to select appropriate indicators and targets at both the output and purpose levels, which are the most critical results for ensuring that the project achieves its intended outcomes. Projects have the option of monitoring relevant indicators at the lowest, activity level and the contextual goal level as well. The final element of the *logframe* is the assumptions column, which Applicants should use to describe those conditions outside their control which might affect achievement of project results. Applicants must carefully consider what might go wrong that would affect the link of activities to outputs, the link of outputs to purpose, and the link of purpose to goal. Any issues that are outside the Applicant's control which might affect the ability to achieve results should be documented in the assumptions column so they can be monitored over the life of the project.

Other Project Interventions: This category of interventions may include such activities as awareness raising and social mobilization campaigns, alternative income generating activities and business/skills training for parents, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure that are also important for *withdrawing* and *preventing* children from *exploitive labor*, including by improving access to and the quality of *basic education.* While Grantees are encouraged to address the needs of children engaged in, or *at-risk* of entering, *exploitive labor* and their families in a comprehensive manner, these activities will not be considered as *direct educational services.* Therefore, individuals benefiting solely from these interventions cannot be counted toward the project's target number of *direct beneficiaries* or in GPRA reporting. USDOL recognizes that, in many cases, a combination of services—both *direct educational services* and *other project interventions* as outlined in this paragraph—may represent the most effective strategy for *prevention* or *withdrawal* of a child from *exploitive labor.* USDOL encourages Applicants to propose the most effective package of services for *direct beneficiaries* to achieve the goal of *withdrawing children from*, and *preventing children from entering, exploitive labor.* Grantees should be able to match a particular service or educational or training opportunity to an individual child. Therefore, project interventions such as school structural improvements, teacher training, construction of latrines, inclusion of child labor modules in teacher curriculum, or the provision of classroom chalkboards are not considered *direct educational services* as defined above.

Outputs-Based Budget: Delineates project funds allocated for specific activities and outputs, based on the project design.

Performance Monitoring Plan (PMP): A *PMP* serves three primary functions: (1) To delineate the data collection process; (2) to ensure data comparability; and (3) to guide data analysis. A *PMP*, therefore, must contain the following information:

• Definition of each indicator and unit of measurement.
• Description of each indicator data source.
• Method of data collection or calculation.
• Frequency and schedule of data collection.
• Institution(s) or person(s) responsible for ensuring data availability.
• Type or frequency of data analysis and person/institution responsible for data analysis.
• Cost of data collection.

Appropriate performance indicators are expected to be selected during the *project design consolidation phase* and further defined as the *PMP* is finalized. *PMP* finalization includes determining precise indicator definitions, data collection methodologies, responsibilities, and costs. Target setting is also a critical part of the *PMP* finalization process, as targets are listed by time period in the *PMP's* data tracking table. (Further information on data tracking will be provided to Grantees after award).

Prevented from Entering (Exploitive Child Labor): (see definition of *Children Prevented from Entering Exploitive Child Labor).*

Project Design Consolidation Phase: This phase of a project lasts no longer than one year after award. During this phase, the Grantee outlines the goals and objectives of the project; identifies activities of the project that support the stated goals and objectives; establishes specific deadlines and responsibilities for carrying out the activities of the project; and determines a timeframe for measuring the progress and achievements of the project. The *Project Design Consolidation Phase*, therefore, includes the development of a *Project Document*, *Logical Framework (logframe)*, *Performance Monitoring Plan (PMP)*, *Work Plan*, *Sustainability Plan*, and evaluation plan. Grantees must also address the minimum requirements identified in the *Cooperative Agreement*, which include but is not limited to defining and describing children targeted; needs, gaps, and/or barriers; proposed strategies to address the needs/gaps/barriers; sustainability and exit strategies; detailed description of activities; program management and performance assessment; and budget and cost effectiveness. USDOL may provide technical assistance to Grantees to refine the *Project Document*, *Logframe*, *PMP*, *Work Plan*, *Sustainability Plan*, and evaluation plan, which, as deliverables, are subject to approval by USDOL.

Project Document: The *Project Document* serves a number of functions. It describes the situation that gave rise to a particular project; explains ''why'' a project was started; establishes the plan for what must be done; and outlines what must be produced, by when and by whom, and what is expected to happen after the project ends. It can serve as a reference point for all of the implementing partners involved in a project. The *Project Document* also provides the basis for assessing the success of a project. (The format for the *Project Document* will be provided to Grantees after award). The *Project Document* is supplemented by the *Logical Framework (logframe)* (see definition above). For the most part, Grantees are expected to have already presented an essentially complete Project Design strategy and *logframe* as part of their application submitted in response to this solicitation. The *Project Document* (including a project budget) is a more refined and revised version of the application and sets the technical parameters and reference points for the project according to the standardized format outlined by USDOL.

The original proposal is expected to serve as the basis for the Grantee's *Project Document*. The *Project Document* should clearly reflect an accurate understanding of *direct beneficiaries* and how a child can be counted as a *direct beneficiary* for the purposes of GPRA reporting. The *Project Document* must also clearly describe the strategy for monitoring and reporting the working and educational status of children who are *direct beneficiaries* of the project. This strategy includes identifying the responsible persons (i.e., project/partner staff, school teachers, community members, parents), how the responsible persons are expected to collect the information (assessment form, door-to-door monitoring, discussions with children), and how, and at what frequency, the Grantee will obtain the information. The project's monitoring strategy will help inform the *Performance Monitoring Plan (PMP).*

Project Monitoring System: USDOL requires the development and use of a project monitoring system that incorporates two components: (1) *Direct beneficiary monitoring* that allows for the monitoring of the work and educational status of children directly benefiting from the project (i.e. *direct beneficiaries*), and (2) a project *Performance Monitoring Plan (PMP)* that identifies indicators and tracks progress regarding the project's major objectives. The *direct beneficiary monitoring system* is a component of the overall project *PMP*, and allows USDOL to report to Congress and other interested parties on the number of children that are *withdrawn from*, and *prevented from entering*, *exploitive child labor* by USDOL-funded projects. Grantees should use their *PMPs* also to monitor progress in achieving capacity building objectives. (The format for the *PMP* will be provided to Grantees after award).

The *project monitoring system* can help assess the effects and impact of project results to determine if the project activities are achieving the intended outcome. *Project monitoring systems* include records of the basic identification information for all *direct beneficiaries* receiving *direct educational services* (i.e., name, address, sex, and age) and their work status (working, withdrawn, or prevented), working conditions, and educational status (enrollment, *retention*, and school performance). *Project monitoring systems* should be designed to collect this kind of detailed information for all *direct beneficiaries* that receive and continue to receive *direct educational services* and *other project interventions* provided by the project.

Retention (a common indicator): The percentage of children withdrawn/prevented through a USDOL-supported educational program(s) who continue in the program (i.e.

to subsequent years, periods, and/or levels of the program or who stay in the program even if they are not promoted) and who continue to be *withdrawn* or *prevented from exploitive child labor.*

Sustainability Plan: A *Sustainability Plan* provides detailed strategies, assumptions, and conditions for sustainability, and includes both (1) a *Sustainability Plan*/ matrix, and (2) an exit strategy. Strategies are likely to differ by project and by the type of sustainability being addressed (i.e., financial, benefits, programmatic/institutional, and political). *Sustainability Plans* must also include a clear exit strategy that outlines how a project will transfer responsibility for project components to local or national stakeholders by the end of the project, if not sooner. Activities to address sustainability issues must be identified together with a list of (or statement concerning) external factors that may impact sustainability. *Sustainability Plans* must also include a clear process for monitoring progress towards achieving the different areas of sustainability and key partners or institutions involved.

Unconditional Worst Forms of Child Labor: This term refers to those *worst forms of child labor* specifically identified in Article 3 parts (a)–(c) of ILO Convention 182. Children involved in the *unconditional worst forms of child labor* must no longer be working to be considered as *withdrawn from exploitive labor.* No improvements in the working conditions of children involved in *unconditional worst forms of child labor*, such as slavery or slavery-like practices, prostitution or pornography, or illicit activities, can create an acceptable environment for children to continue to work in an unconditional worst forms of child labor, even for one hour.

Withdrawn from Exploitive Child Labor: (see definition of Children Withdrawn from *Exploitive Child Labor*).

Work Plan: A Work Plan must identify major project activities, deadlines for completing those activities, and person(s) or institution(s) responsible for completing these activities. The *Work Plan* must correspond to activities identified in the logframe. The *Work Plan* may vary depending on what is the most logical form. It may, for example, be divided by project component, country, or region.

Worst Forms of Child Labor: This term refers to the forms of child labor that fall under ILO Convention 182, Article 3, parts (a)–(d); includes the forms of work referred to as ''*unconditional worst forms of child labor*'' [parts (a)–(c)] and ''*hazardous work*'' [part (d)], which, according to ILO Convention 182, ''shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards * * *'' As this suggests, forms of work identified as ''hazardous'' for children [part (d)] may differ from country to country.

Youth: While individual countries may define ''*youth*'' differently, for the purposes of this solicitation, *direct beneficiaries* may only include children or *youth* under the age of 18 years (see definition of *Child*).

Appendix B: Technical Proposal Format

Abstract

A. Project Design/Budget-Cost Effectiveness
- i. Background and Justification
- ii. Proposed Strategy
- iii. Project Monitoring and Evaluation
- iv. Budget-Cost Effectiveness Narrative (with cost of activities linked to the *outputs-based budget* in Annex B)

B. Sustainability Plan

C. Organizational Capacity
- i. International and U.S. Government Grant Experience
- ii. Country Presence and Host Government Support
- iii. Fiscal Oversight

D. Key Personnel/Management Plan/Staffing
- i. Key Personnel
- ii. Other Professional Personnel
- iii. Management Plan
- iv. Staff Loading Plan

E. Additional *Direct Beneficiaries* (optional)

F. Cost Sharing (optional)

Annex A: The *Logical Framework* Matrix

Annex B: *Outputs-Based Budget*

(Examples of a *Logical Framework* Matrix, a *Sustainability Plan*, an *Outputs-Based Budget, PMP* and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.*)

APPENDIX C DEFINITIONS AND USUAL CHARACTERISTICS OF SUBGRANTS VS. SUBCONTRACTS,

[U.S. Department of Labor Office of Child Labor, Forced Labor, and Human Trafficking]

	Subgrants	Subcontracts
Definitions:		
General Purpose*	Subject to an agreement that provides for the transfer of money or property to accomplish a public purpose of support or stimulation as authorized under Federal statute.	Subject to an agreement in which the purpose is primarily to acquire goods and services.
Focus*	Carries out one or more major programmatic functions.	Provides goods and services that are ancillary or supportive to the operation of the Federal program.
Recipient Responsibility*	Has responsibility for programmatic decision-making, adherence to applicable Federal program compliance requirements, and is able to determine which participants are eligible to receive Federal financial assistance.	Responsibility for programmatic decision making rests primarily with the party providing payment and inspecting deliverables. Is subject to procurement regulations, but not programmatic compliance requirements.
Usual Characteristics: s		
Recipients	Awarded largely to non-profits, institutions of higher education, and state and local governments. Fewer commercial enterprises are recipients.	Awarded largely to commercial enterprises, although non-profits and state or local governments may respond to a bid or negotiated solicitation.
Terms & Performance Standards.	Less rigorous according to their terms and conditions than contracts. Performance is measured against whether the objectives of the Federal program are met (for example, to eliminate exploitive child labor).	More rigorous according to their terms and conditions. Performance is measured against the delivery of goods and services.
Operational Environment	Less likely to operate in a competitive environment and usually provides services for a public purpose.	Operates in a competitive environment and provides goods and services to many different purchasers.
Monitoring	Less regulated. If the task is not accomplished, there may be fewer legal and financial ramifications.	More heavily regulated and more likely to carry substantial legal or financial risk.
Scope of Work	Scope of work, deliverables and delivery schedule are more flexible and easier to amend when changes are necessary.	Scope of work may be less flexible and more difficult to amend. Firm delivery schedule with deliverables subject to rigorous inspection.

APPENDIX C DEFINITIONS AND USUAL CHARACTERISTICS OF SUBGRANTS VS. SUBCONTRACTS,—Continued

[U.S. Department of Labor Office of Child Labor, Forced Labor, and Human Trafficking]

	Subgrants	Subcontracts
Payment Schedule	Funds usually drawn down by recipient or paid in a lump sum. Payments are based on budgeted amounts rather than the unit cost of services.	Payment is usually made by invoice only after goods are delivered or services rendered. Advances are made under specific, limited circumstances. Payments are related to goods delivered or services rendered.

*The distinction between subgrants vs. subcontracts should be made primarily based on these three definitions. Even if an agreement has some or many of the "usual characteristics" of a subgrant, project managers and auditors should closely examine its purpose, focus, and recipient responsibilities (using the definitions provided above) before determining whether it meets the definition of a subgrant or subcontract.

BILLING CODE 4910–28–P

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 02/28/09

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: ______________________________

Applicant's DUNS Number: ______________________________

Federal Program: ______________________________ **CFDA Number:** ________

1. Has the applicant ever received a grant or contract from the Federal government?

☐ Yes ☐ No

2. Is the applicant a faith-based organization?

☐ Yes ☐ No

3. Is the applicant a secular organization?

☐ Yes ☐ No

4. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

5. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

6. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50

☐ 4-5 ☐ 51-100

☐ 6-14 ☐ over 100

7. What is the size of the applicant's annual budget?

(Check only one box.)

- ☐ Less Than $150,000
- ☐ $150,000 - $299,999
- ☐ $300,000 - $499,999
- ☐ $500,000 - $999,999
- ☐ $1,000,000 - $4,999,999
- ☐ $5,000,000 or more

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. Self-explanatory.

2. Self-identify.

3. Self-identify.

4. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

5. Self-explanatory.

6. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

7. Annual budget means the amount of money your organization spends each year on all of its activities.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890–0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: The Agency Contact listed in this grant application package.

[FR Doc. E7–11526 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,876; TA–W–60,876B]

Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Parquet Flooring Department, Oneida, Tennessee; Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Pattern Plus Flooring Department, Oneida, TN; Notice of Revised Determination on Reconsideration

On May 2, 2007, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration of the Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) petition filed on behalf of workers and former workers of Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Pattern Plus Flooring Department, Oneida, Tennessee (TA–W–60,876B). The Notice of affirmative determination was published in the **Federal Register** on May 9, 2007 (72 FR 26425). Workers covered by TA–W–60,876B produce Pattern Plus flooring, a variety of hardwood flooring.

The request for reconsideration alleged that Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Oneida, Tennessee (the subject firm) increased its imports of hardwood flooring.

On March 28, 2007, the Department issued a TAA/ATAA certification for workers of Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Solid Strip Flooring Department, Oneida, Tennessee (TA–W–60,876C). Solid Strip is a type of hardwood flooring produced by the subject firm.

During the reconsideration investigation, the Department confirmed that the subject firm increased imports of hardwood flooring following a shift of production abroad. The Department also received new information on the subject firm's organization and operation, as well as information on the various types of hardwood flooring produced by the subject firm.

The new information confirmed that workers at the subject firm are separately identifiable by product line and revealed that the three types of hardwood flooring produced by the subject firm are essentially the same. Each type of flooring is made from hardwood (parquet comprises of small pieces of hardwood, solid strip comprises of long strips of solid hardwood, and Pattern Plus comprises of large sheets of engineered hardwood) and each type serves the same function—covering the floor.

The Department determines that the types of hardwood flooring produced at the subject firm are like and directly competitive with each other. As such, the Department conducted a reconsideration investigation of TA–W–60,876 (parquet flooring) as well as TA–W–60,876B (Pattern Plus).

TA–W–60,876

The number of workers producing parquet flooring at the subject firm declined in 2006 from 2005 numbers, and sales and production levels of parquet flooring declined in 2006 from 2005 levels. The subject firm increased imports of articles like and directly competitive with parquet flooring produced by the subject workers.

TA–W–60,876B

The number of workers producing Pattern Plus flooring at the subject firm declined in 2006 from 2005 numbers, and sales and production levels of Pattern Plus flooring declined in 2006 from 2005 levels. The subject firm increased imports of articles like and directly competitive with Pattern Plus flooring produced by the subject workers.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met by the worker groups covered by TA–W–60,876 and TA–W–60,876B.

In both TA–W–60,876 and TA–W–60,876B, a significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Further, in both cases, competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that the subject firm increased imports of articles like or directly competitive with hardwood flooring produced by the subject worker groups following a shift of production abroad. In accordance with the provisions of the Trade Act of 1974, as amended, I make the following certification:

All workers of Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Parquet Flooring Department, Oneida, Tennessee (TA–W–60,876), Armstrong Wood Products, Inc., and Armstrong Hardwood Flooring Company, Pattern Plus Flooring Department, Oneida, Tennessee, (TA–W–60,876B), who became totally or partially separated from employment on or after January 31, 2006 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11479 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,373]

Autolign Manufacturing Group, Inc., Milan, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 25, 2007, in response to a petition filed by a state agency representative on behalf of workers of Autolign Manufacturing Group, Inc., Milan, Michigan.

The Department was unable to locate an official of the company to obtain the information necessary to render a determination. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of June 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11480 Filed 6–13–07; 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 June 25, 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 June 25, 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 7th day of June 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA petitions instituted between 5/29/07 and 6/1/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61588	Automatic Systems USA, Inc. (Wkrs)	Plattsburgh, NY	05/29/07	05/25/07
61589	Hi-Craft Engineering Incorporated (State)	Fraser, MI	05/29/07	05/25/07
61590	Stover Industries, Inc. (MSR)	Pt. Pleasant, WV	05/29/07	05/25/07
61591	Truth Hardware-East (Comp)	West Hazleton, PA	05/29/07	05/29/07
61592	AMF Billiards and Games, Inc. (Comp)	Bland, MO	05/30/07	05/29/07
61593	Teradyne Inc. (State)	Agoura, CA	05/30/07	05/29/07
61594	Robert Bosch Tool Corporation (Comp)	Lincolnton, NC	05/30/07	05/29/07
61595	Asheboro Elastics Corporation (Comp)	Asheboro, NC	05/31/07	05/30/07
61596	Lancaster Preferred Partners (Wkrs)	Lancaster, PA	05/31/07	05/30/07
61597	Vishay Intertechnology, Inc. (Comp)	City of Industry, CA	05/31/07	05/30/07
61598	Penn-Plax Inc. (Wkrs)	Hauppauge, NY	05/31/07	05/30/07
61599	Patrick Industries, Inc. (Comp)	Woodburn, OR	05/31/07	05/30/07
61600	Chamber's Fabrics, Inc. (Wkrs)	High Point, NC	05/31/07	05/31/07
61601	Intel Corporation—Fab 23 (Comp)	Colorado Springs, CO	05/31/07	05/30/07
61602	EGS Electrical Group, Lexington Plant (IBEW)	Lexington, OH	05/31/07	05/30/07
61603	Gage Pattern Inc. (Wkrs)	Norway, ME	05/31/07	05/30/07
61604	Bendix (USWA)	Frankfort, KY	05/31/07	05/31/07
61605	Yamaha Musical Products (Comp)	Grand Rapids, MI	06/01/07	05/09/07
61606	Qwest Services Corporation (Wkrs)	Denver, CO	06/01/07	05/31/07
61607	Kirk Lumber Company (Wkrs)	Suffolk, VA	06/01/07	05/30/07
61608	Personnel Management, Inc. (Wkrs)	Princeton, IN	06/01/07	05/29/07
61609	Eagle Ottawa Newaygo Farms (State)	Walker, MI	06/01/07	05/23/07
61610	Ogura Corporation (Wkrs)	Madison Heights, MI	06/01/07	05/30/07
61611	Danice Manufacturing (Wkrs)	South Lyon, MI	06/01/07	05/23/07

[FR Doc. E7–11474 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,843]

Clorox Services Company, a Subsidiary of the Clorox Company Oakland, CA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked April 16, 2007, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on March 13, 2007 and published in the **Federal Register** on March 30, 2007 (72 FR 15168).

The initial investigation resulted in a negative determination based on the finding that workers of the subject firm do not produce an article or support production of an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of June, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11478 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,507]

CGI Employed at Cott Beverages Wyomissing, Inc., Wyomissing, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 10, 2007, in response to a worker petition filed on behalf of workers of CGI employed at Cott Beverages Wyomissing, Inc., Wyomissing, Pennsylvania.

The petitioning group of workers is covered by an active certification (TA–W–60,463 as amended) which expires on January 10, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of June 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11473 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,463]

Cott Beverages Wyomissing, Inc., Including On-Site Leased Workers of Gage Personnel, Tempstar Staffing, and CGI Wyomissing, PA; 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 of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 10, 2007, applicable to workers of Cott Beverages Wyomissing, Inc., including on-site leased workers of Gage Personnel and Tempstar Staffing, Wyomissing, Pennsylvania. The notice was published in the **Federal Register** on January 25, 2007 (72 FR 3424).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of soft drinks.

New information shows that leased workers of CGI were employed on-site at the Wyomissing, Pennsylvania location of Cott Beverages Wyomissing, Inc.

Based on these findings, the Department is amending this certification to include leased workers of CGI working on-site at Cott Beverages Wyomissing, Inc., Wyomissing, Pennsylvania.

The intent of the Department's certification is to include all workers employed at Cott Beverages Wyomissing, Inc., Wyomissing, Pennsylvania who were adversely affected by a shift in production of soft drinks to Canada.

The amended notice applicable to TA–W–60,463 is hereby issued as follows:

> ''All workers of Cott Beverages Wyomissing, Inc., including on-site leased workers of Gage Personnel, Tempstar Staffing, and CGI, Wyomissing, Pennsylvania, who became totally or partially separated from employment on or after November 20, 2005, through January 10, 2009, are eligible to apply for 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 at Washington, DC this 4th day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11477 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *May 28 through June 1, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,528; Laneventure Furniture, a subsidiary of Lane Furniture Industries, Inc., Conover, NC: May 16, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–61,521; Durham Manufacturing Co., Injection Molding Department, On-Site Leased Workers of Outsource Solutions, Durham, CT: May 15, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,378; Applied Biotech, Inc., a subsidiary of Inverness Medical Innovations, San Diego Division, San Diego, CA: April 24, 2006.

TA–W–61,430; Thomasville Furniture Industries, Inc. (TFI), Upholstery Plant #4, Troutman, NC: April 30, 2006.

TA–W–61,463; Leick Furniture, Inc., Sheboygan, WI: May 4, 2006.

TA–W–61,518; Culligan International, Corporate Division, Northbrook, IL: April 27, 2006.

TA–W–61,323; Rapid Die and Engineering, Inc., Grand Rapids, MI: April 17, 2006.

TA–W–61,540; Santens of America, a subsidiary of Santens NV, Including On-Site Leased Workers of Defender, Upstate, Anderson, SC: May 16, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,537; Sony Electronics, Inc., Aperture Grille Division, On-Site Leased Workers of Staffmark, Mt. Pleasant, PA: May 17, 2006.

TA–W–61,367; Air System Components, Inc., El Paso Division, El Paso, TX: April 20, 2006.

TA–W–61,372; Rockwell Collins, Workers Producing In-Flight Entertainment System, Cabin Systems Division, Tustin, CA: April 16, 2006.

TA–W–61,379; Chromalox, Inc., On-Site Leased Workers From Kelly Services, Albany, WI: June 24, 2006.

TA–W–61,408; The Toro Company, On-Site Leased Workers From Volt Services, Irrigation/El Paso Division, El Paso, TX: September 15, 2006.

TA–W–61,453; Deckerville Metal Systems, LLC, Leased Workers of Trillium Staffing Solutions and Employment Giant/Select, Deckerville, MI: April 30, 2006.

TA–W–61,512; Freudenberg—NOK, Gasket Division, Newport, TN: May 15, 2006.

TA–W–61,519; Thermal Fisher L.L.C., International Projects Department, Mountainside, NJ: May 5, 2006.

TA–W–61,571; Bristol, Inc., dba Remote Automation Solutions, Also known as Bristol Babcock, Printed Circuit Board Division, Watertown, CT: May 23, 2006.

TA–W–61,588; Automatic Systems USA, Inc., On-Site Leased Workers from Westaff, Plattsburgh, NY: May 25, 2006.

TA–W–61,363; Methode Electronics, Inc., Automotive Electronics Division, Carthage, IL: April 16, 2006.

TA–W–61,422; WestPoint Home—Fairfax Manufacturing, Leased Workers of Ambassador Personnel, Valley, AL: April 30, 2006.

TA–W–61,431; Thomasville Furniture Industries, Inc. (TFI), Plant C, Thomasville, NC: April 30, 2006.

TA–W–61,476; Eureka Manufacturing Company, Division of Reed and Barton, Norton, MA: May 8, 2006.

TA–W–61,532; GHS Corporation, dba GHS Strings, Battle Creek, MI: May 16, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,446; Bosal Industries Tennessee, A Subsidiary of Bosal North America, Columbia, TN: April 24, 2006.

TA–W–61,446A; Bosal Industries Georgia, Saturn Department, A Subsidiary of Bosal North America, Lavonia, GA: April 24, 2006.

TA–W–61,501; Visteon Regional Assembly and Manufacturing, LLC, Chesapeake, VA: May 10, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,528; Laneventure Furniture, A Subsidiary of Lane Furniture Industries, Inc., Conover, NC.

TA–W–61,521; Durham Manufacturing Co., Injection Molding Department, On-Site Leased Workers of Outsource Solutions, Durham, CT.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,809; Woods Equipment Company, Wainroy Division, Gardner, MA.

TA–W–61,291; RR Donnelley, Liberty Division, Liberty, MO.

TA–W–61,539; Interlake Material Handling, Inc., Lodi, CA.

TA–W–61,586; Reis Associated Company, Inc., Ballwin, MO.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,306; Analog Devices, Inc, Santa Clara, CA.

TA–W–61,348; Nortech Systems, Inc., Bemidji, MN.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,339; Klote International Corp., Maryville, TN.

TA–W–61,438; TMP Directional Marketing, LLC, Graphics Division, Fort Wayne, IN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,480; Elston Richards, Inc., Anderson, IN.

TA–W–61,487; Pennsylvania House Showroom, Hickory, NC.

TA–W–61,542; Kenakore Solutions, Van Wert, OH.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *May 28 through June 1, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 6, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–11476 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,237; TA–W–61,237A]

Oneida Ltd.,Distribution Facility Sherrill, New York; Oneida Ltd, Sales Office Oneida, New York; 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 Oneida Ltd, Distribution Facility, Sherrill, New York and Oneida Ltd, Sales Office, Oneida, New York. 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–61,237; Oneida Ltd, Distribution Facility Sherrill, New York and

TA–W–61,237A; Oneida Ltd, Sales Office, Oneida, New York (June 6, 2007).

Signed at Washington, DC this 8th day of June 2007.

Linda G. Poole,

Certifying Officer Division of Trade Adjustment Assistance.

[FR Doc. E7–11475 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Blue Ridge Shadows Hotel and Conference Center, LLC/Front Royal, Virginia.

Principal Product: The loan, guarantee, or grant application is for a new business venture to construct a hotel with restaurant and spa facilities. The NAICS industry codes for this enterprise are: 721110 Hotels (except casino hotels) with golf courses, tennis courts and/or other health spa facilities (*i.e.*, resorts); and, 722110 Restaurants, full service.

DATES: All interested parties may submit comments in writing no later than June 28, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 8th of June, 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E7–11509 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

YouthBuild; Solicitation for Grant Applications (SGA) SGA/DFA–PY 06–08, Amendment 2

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 26, 2007, announcing the availability of funds and solicitation for grant applications for YouthBuild Grants to provide disadvantaged youth with the education and employment skills for meaningful work and service to their communities. The document is hereby amended.

FOR FURTHER INFORMATION CONTACT: Donna Kelly, Grants Management Specialist, Telephone (202) 693–3934.

Amendment

In the **Federal Register** of April 26, 2007, in FR Volume 72, Number 80:

1. On page 20878, in the right column, Part III. B. Eligible Enrollees, the intent of the Solicitation was to establish criteria for "eligible enrollees." After further consideration, the solicitation is now amended to clarify the definition of "school dropout" consistent with the way the term is used in the Workforce Investment Act regulations at 20 CFR 664.310. Accordingly, the solicitation is amended to read: "The term 'school drop out' is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth attending an alternative school at the time of registration is not a drop out."

2. On page 20879, beginning in the right column, under Part III. The Work Site Description, it states, "The application must include all of the following information relating to the planned work site for this project."

The solicitation is amended to read: "The application must include all of the following information relating to the planned work site for this project in year one. Information on property for use in year two will be requested prior to receipt of 2nd year funding."

Signed at Washington, DC, this 7th day of June, 2007.

Eric Luetkenhaus,

Grant Officer, Employment & Training Administration.

[FR Doc. E7–11499 Filed 6–13–07; 8:45 am]

BILLING CODE 4510–FT–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Time and Date: The Board of Directors of the Legal Services Corporation will meet on June 25, 2007 via conference call. The meeting will begin at 2 p.m., (EDT), and continue until conclusion of the Board's agenda.

Location: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

Status of Meeting: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone should call 1–888–282–9568 and enter 16703 on the key pad when prompted. To enhance the quality of your listening experience as well as that of others and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

Matters to be Considered: 1. Approval of the agenda.

2. Consider and act on further direction to management regarding the Corporation's locality pay program, previously discussed at the January and April 2007 Board/Committee meetings.

3. Consider and act on other business.

4. Public comment.

5. Consider and act on adjournment of meeting.

Contact Person for Information: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: June 12, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–2978 Filed 6–12–07; 3:50 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–048)]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, July 12, 2007, 3 p.m. to 5 p.m. Central Time.

ADDRESSES: Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Mark M. Kowaleski, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0751.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include Safety Organization and Management, Human Capital, Contractor Safety, Agency Safety Policy, Constellation Program Safety, and Commercial Orbital Transportation Services. The meeting will be open to the public up to the seating capacity of the room (50).

Seating will be on a first-come basis. Please contact the ASAP Office at (202) 358–0914 at least 48 hours in advance to reserve a seat. Visitors are required to meet in front of Building 110 30 minutes prior to the start of the meeting at which time they will board a NASA bus which will take them to Building 1. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; Green card/visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of visitor. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Susan Burch via e-mail at *Susan.Burch@nasa.gov* or by telephone at (202) 358–0914.

Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Dated: June 7, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–11437 Filed 6–13–07; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection: Request for General Clearance Authority for 2007–2009 for Collections from Institute of Museum and Library Services Grantees for the Purposes of Evaluation and Reporting

AGENCY: Institute of Museum and Library Services, The National Foundation for the Arts and the Humanities.

SUMMARY: The Institute of Museum and Library Service (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning a requested General Clearance Authority for data collections in Fiscal Years 2007–2009 to evaluate IMLS programs and to inform IMLS program administration, evaluate programs and services, and assess impact.

A copy of the information collection plan for 2007–2009 and a sample of the information collections included under this clearance request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 13, 2007.

IMLS is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions likely to be used;

• Enhance the quality, utility and clarity of information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Barbara G. Smith, E-Projects Officer, Office of the CIO, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Ms. Smith can be reached by Telephone: 202–653–4688, Fax: 202–653–4625, or by e-mail at *bsmith@imls.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* The IMLS administers a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act directs the Agency to conduct analyses on the impact, effectiveness, and best practices of IMLS grants for museum and library services. (See 20 U.S.C. 9108.)

Abstract: Pursuant to the Museum and Library Services Act (20 U.S.C. 9108), IMLS must regularly evaluate its programs to understand trends, impact, and effectiveness of its grants for museum and library services. It seeks General Clearance Authority to conduct surveys and other information collections from the universe of its grantees for this purpose.

OMB Number: N/A.

Agency Number: 3137.

Affected Public: Federal, state and local governments, state library agencies, libraries, museums, and professional associations and service organizations serving these fields who have received IMLS awards.

Number of Respondents: 2000.

Frequency: Annually.

Burden Hours Per Respondent: 1 Total burden hours: 2000.

Total Annualized Capital/Startup Costs: N/A.

Total Costs: $51,440 (average respondent hourly wage of $23.64 with annual increases of 5% over 5 years × 2000).

Contact: Barbara G. Smith, E-Projects Officer, Office of Information Resources Management, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Ms. Smith can be reached by Telephone: 202–653–4688, Fax: 202–653–4625, or by e-mail at *bsmith@imls.gov.*

Dated: June 11, 2007.

Barbara G. Smith,

E-Projects Officer.

[FR Doc. E7–11486 Filed 6–13–07; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Monday, June 25, 2006 from 2 p.m. to 5:15 p.m.

AGENDA: Committee Meetings of the Eleventh National Museum and Library Service Board Meeting:

2 p.m.–3:30 p.m. Meeting of the Committee on Policy & Planning.

I. Staff Reports.

II. Other Business.

3:45 p.m.–5:15 p.m. Meetings of the Committee on Partnerships & Government Affairs.

I. Staff Reports.

II. Other Business.

(Open to the public).

PLACE: The meetings will be held in the Board room at the Institute of Museum and Library Services. 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

TIME AND DATE: Tuesday, June 26, 2007 from 8:30 a.m. to 5 p.m.

AGENDA: Eleventh National Museum and Library Services Board Meeting:

8:30 a.m.–10 a.m. Jury Meeting to consider the National Awards for Library Services.

(Closed to the Public).

10:15 a.m.–11:45 a.m. Jury Meeting to consider the National Awards for Museum Services.

(Closed to the Public).

1:30 p.m.–2 p.m. Award Deliberations.

(Closed to the Public).

2 p.m.–5 p.m. Eleventh National Museum and Library Services Board Meeting:

I. Welcome.

II. Approval of Minutes.

III. Financial Update.

IV. Legislative Update.

V. Committee Discussion.

VI. Board Program.

VII. Board Update.

VIII. Adjournment.

(Open to the Public).

PLACE: The meeting will be held in the Board Room at the Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The Jury Meetings to consider the National Awards for Museum and Library Services and the National Award Recommendation session, on Tuesday June 26, 2007, will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meetings from 2 p.m. until 5:15 p.m. on Monday, June 25, 2007 and the meeting from 2 p.m. to 5 p.m. on Tuesday, June 26, 2007 are open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4699 at least seven (7) days prior to the meeting date.

Dated: June 11, 2007.

Kate Fernstrom,

Chief of Staff.

[FR Doc. 07–2976 Filed 6–12–07; 3:35 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 19, ‘‘Notices, Instructions, and Reports to Workers: Inspection and Investigations’’.

2. *Current OMB approval number:* OMB No. 3150–0044.

3. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

4. *Who is required or asked to report:* Licensees authorized to receive, possess,

use, or transfer material licensed by the NRC.

5. *The number of annual respondents:* 4,650.

6. *The number of hours needed annually to complete the requirement or request:* 35,674 hours (4,553 reporting [approximately 0.98 hours per response] and 31,121 recordkeeping [approximately 6.7 hours per recordkeeper]).

7. *Abstract:* Title 10 of the Code of Federal Regulations, Part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions. The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

Submit, by August 13, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 7th day of June 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–11513 Filed 6–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–243]

The Oregon State University; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of the Oregon State University Research Reactor Facility License No. R–106 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. R–106, which authorizes the Oregon State University (the licensee) to operate the Oregon State University Research Reactor (OSTR) at a maximum steady-state thermal power of 1.1 megawatts (MW) thermal power. The renewed license would authorize the applicant to operate the OSTR for an additional 20 years beyond the period specified in the current license. The current license for the OSTR expired on August 15, 2006.

On October 5, 2004, as supplemented on August 8, 2005, May 24, 2006, November 10, 2006 and November 21, 2006, the Commission's staff received an application from the licensee filed pursuant to 10 CFR part 50.51(a), to renew Facility License No. R–106 for the OSTR. Because the license renewal application was filed in a timely manner in accordance with 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that the licensee has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50–243 for Facility License No. R–106, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within sixty (60) days after the date of publication of this **Federal Register** Notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agency Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/readingrm/doc-collections/cfr.* Persons who do not have access to the NRC Web site or who encounter problems in accessing the documents located in the Electronic Reading Room should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at pdr@nrc.gov. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board

Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 50 and 51, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with the particular interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the requester's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/ petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1]

Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the OSTR license renewal application.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, (U.S. Nuclear Regulatory Commission, *HEARlNGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC., Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the licensee. The licensee's contact for this is Dr. Steven R. Reese, Director, Radiation Center, Oregon State University, 100 Radiation Center, Corvallis, OR 97331–5903.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309 (c)(1)(i)-(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission's PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML042430055 for part one and ML042430048 for part two. Copies of the application to renew the facility license for the OSTR are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. The initial application and other related documents may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS Accession Nos.: ML071430452, ML043270077, ML071300010, ML052290051, ML061310209, ML061510355, ML062060026, ML063210182, and ML063320500. Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of June 2007.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

For the Nuclear Regulatory Commission.

Daniel Collins,

Branch Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E7–11515 Filed 6–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Fitzpatrick, LLC, and Entergy Nuclear Operations, Inc.; James A. Fitzpatrick Nuclear Power Plant; Notice of Availability of the Draft Supplement 31 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of James A. Fitzpatrick

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license DPR–59 for an additional 20 years of operation for the James A. FitzPatrick Nuclear Power Plant (JAFNPP). JAFNPP is located on Lake Ontario in Oswego County, approximately seven miles northeast of the City of Oswego, New York. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 31 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the draft Supplement 31 to the GEIS is ML071420019. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* In addition, the libraries: Penfield Library SUNY, 7060 State Route 104, Oswego, NY 13126 and Oswego Public Library, 140–142 East Second Street, Oswego, NY 13126 have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by September 5, 2007; the NRC staff is able to assure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *FitzPatrickEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on August 1, 2007, at the Scriba Town Municipal Building, 42 Creamery Road, Oswego, New York 13126. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Jessie M. Muir, the NRC Environmental Project Manager at 1–800–368–5642, extension 0491, or by e-mail at *FitzPatrickEIS@nrc.gov* no later than July 18, 2007. Members of the public may also register to provide oral comments before the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Muir's attention no later than July 18, 2007, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For Further Information, Contact: Ms. Jessie M. Muir, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Ms. Muir may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 8th day of June, 2007.

For the Nuclear Regulatory Commission.

Rani L. Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–11508 Filed 6–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; South Texas Project, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.92, for Facility Operating Licenses numbered NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of the South Texas Project, Units 1 and 2, located in Matagorda County. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the name of one licensee Texas Genco LP (Texas Genco), to NRG South Texas LP.

The proposed action is in accordance with the licensee's application dated April 4, 2006.

The Need for the Proposed Action

The proposed action results from the purchase of Texas Genco's parent company by NRG Energy, Inc. as approved by the NRC in January 2006.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that: (1) There is a reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

The details of the staff's safety evaluation will be provided in the license amendments that will be issued as part of the letter to the licensee approving the license amendments.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2, NUREG–1171, dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on June 8, 2007, the staff consulted with the Texas State Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 4, 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 O1 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 8th day of June, 2007.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–11501 Filed 6–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Location Change for Public Meeting for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting notice.

FOR FURTHER INFORMATION CONTACT: James Smith, Project Manager, Technical Support Section, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005, Telephone: (301) 415–6459; fax number: (301) 415–5370; e-mail: *jas4@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is hosting a workshop to discuss issues of interest pertaining to the regulation of NRC-regulated fuel cycle facilities. The purpose of the workshop is to discuss various issues of the regulatory program related to the update of 10 CFR part 70. The specific issues to be discussed are 10 CFR part 70, Appendix A reportability of incidents, digital control systems, enforcement policy revisions, uranium solubility issues.

The workshop was originally noticed to be held at the NRC's Executive Boulevard Building; however, due to availability issues, the workshop will now be held in Rockville at The Universities of Shady Grove (USG) Conference Center. The meeting is open to the public. We are expecting that NRC staff, licensees and certificate holders, and other interested parties and stakeholders will be making presentations on these issues of interest, with opportunity for followup discussion on each subject.

II. Dates and Location

Date: June 14, 2007. 9 a.m.–5:30 p.m.

The Universities of Shady Grove (USG), Conference Center Multipurpose Room, 9630 Gudelsky Drive, Rockville, MD 20850, for directions *http://www.shadygrove.umd.edu/about/directions/.*

III. Contact

James Smith, Project Manager, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Special Projects Branch, Mail Stop: T8F42, 301–415–6459, Fax: 301–415–5370, e-mail: *jas4@nrc.gov.*

IV. Further Information

The document related to this action is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS ascension number for the document related to this notice is provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC

Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of June 2007.

For the Nuclear Regulatory Commission.

James Smith,

Acting Chief, Technical Support Branch, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–11510 Filed 6–13–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 18, 2007:

A Closed Meeting will be held on Monday, June 18, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Monday, June 18, 2007 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding a financial institution;

Resolution of litigation claims; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 11, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–11540 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55884]

Order Exempting Certain Error Correction Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934

June 8, 2007.

I. Introduction

Pursuant to Rule 611(d) [1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule 611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting from Rule 611(a) certain transactions to correct bona fide errors in the execution of customer orders, subject to specified conditions discussed below. The exemption is designed to promote efficiency and the best execution of investor orders by allowing trading centers to correct bona fide errors in a manner consistent with their customers' orders, without the trading centers incurring additional costs to meet the requirements of Rule 611(a).

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of displayed quotations in NMS stocks. Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 611(b)(6) provides an exception for a trade-through transaction effected by a trading center that simultaneously routes an intermarket sweep order (''ISO'') to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. Rule 611(b)(5) provides an exception for a trade-through transaction that is an execution of an ISO. Finally, Rule 611(c) requires that the trading center, broker, or dealer responsible for the routing of an ISO take reasonable steps to establish that such order meets the definition of an ISO in Rule 600(b)(30).[5]

The Trading Committee of the Securities Industry and Financial Markets Association (''SIFMA'') has requested that the Commission exempt certain error correction transactions from Rule 611(a).[6] According to the SIFMA Exemption Request, error correction transactions are the mechanism through which broker-dealers remedy the execution of customer orders that have been placed in error or mishandled due to an error involving any term of an order, including, for example, price, number of shares, identification of the security, or execution of a transaction on the wrong side of the market.[7] In addition, the SIFMA Exemption Request noted that, given the high level of automation in today's marketplace, errors often result from delays, outages, or other failures of communications systems used in the delivery or execution of an order. Broker-dealers typically remedy such bona fide errors by entering a subsequent trade on behalf of the customer on the correct terms of the original order. In the interim, however, the market prices for a security may have moved, and the subsequent error correction transaction may be effected at a price that is no longer within the national best protected bid and offer.[8]

According to the SIFMA Exemption Request, broker-dealers seeking to execute error corrections, if required to comply with Rule 611, would need to satisfy all better-priced protected quotations prior to effecting the error correction transaction.[9] Although some error correction transactions that are ''underwater'' within the meaning of the stopped order exception in Rule

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for the Commission to grant exemptions from provisions of the Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] 17 CFR 242.600(b)(30).

[6] Letter to Nancy M. Morris, Secretary, Commission, from Jerry O'Connell, Chairman, SIFMA Trading Committee, dated May 1, 2007 (''SIFMA Exemption Request'').

[7] *Id.* at 2.

[8] *Id.*

[9] *Id.*

611(b)(9) could qualify for such exception, the SIFMA Exemption Request states that there are many instances in which bona fide errors need to be remedied, but may not meet the definition of an underwater trade. The inability of broker-dealers to correct all bona fide errors in a manner consistent with a customer's original order without incurring additional expense would impede the effective correction of trading errors. As a result, SIFMA believes that all bona fide error correction transactions, including those not underwater, merit a specific exemption from Rule 611.[10]

The SIFMA Exemption Request states that the benefits of the requested exemption would far outweigh any disadvantages.[11] The exemption would facilitate the ability of broker-dealers to provide fair remediation to customers who otherwise would suffer economic consequences as a result of inadvertent mistakes or system failures. Also, the SIFMA Exemption Requests asserts that the number of bona fide error correction transactions is likely to be small in comparison to the total number of trades executed in NMS stocks, so that the number of exempted trade-throughs would not unduly detract from the objectives of Rule 611.[12]

III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through meets the following terms and conditions (''Error Correction Transaction''):

(1) The trading center effects the transaction solely to correct a ''bona fide error,'' [13] which is defined as: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.[14]

(2) The bona fide error is evidenced by objective facts and circumstances, and the trading center maintains documentation of such facts and circumstances;

(3) The trading center records the transaction in its error account;

(4) The trading center establishes, maintains, and enforces written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption; and

(5) The trading center regularly surveils to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and takes prompt action to remedy deficiencies in such policies and procedures.

The exemption applies only to the Error Correction Transaction itself. It does not, for example, apply to any subsequent trades effected by a trading center to eliminate a proprietary position connected with the Error Correction Transaction.

The Commission believes that an exemption for Error Correction Transactions is appropriate to promote efficiency and the best execution of investor orders.[15] The exemption will allow trading centers to execute Error Correction Transactions at the appropriate prices to correct bona fide errors without a requirement to prevent trade-throughs of the current protected quotations or to qualify for one of the exceptions in Rule 611(b). It thereby will minimize the expense incurred by trading centers to remedy certain errors in a manner consistent with their customers' orders.

In addition, the terms of the exemption are designed to minimize the potential for abuse, such as claiming its applicability to transactions other than those to correct bona fide errors. For example, a bona fide error must be evidenced by objective facts and circumstances, and the trading center must document such facts and circumstances. A trading center must record the Error Correction Transaction in an error account and implement policies and procedures that reasonably address errors and the use of Error Correction Transactions. A trading center's use of the exemption therefore should be readily reviewable by the applicable regulatory authorities.

Finally, Error Correction Transactions should represent a very small percentage of the total number of trades in NMS stocks. The exemption therefore should not significantly detract from the policy objectives of Rule 611.

For the foregoing reasons, the Commission finds that granting the foregoing exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through qualifies as an Error Correction Transaction, as defined above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11439 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55883]

Order Exempting Certain Print Protection Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934

June 8, 2007.

I. Introduction

Pursuant to Rule 611(d) [1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule

[10] *Id.*

[11] *Id.* at 5.

[12] *Id.* at 5.

[13] The exemption solely addresses the status of a transaction under Rule 611. It presumes that the trading center has complied with all requirements applicable to error transactions, including SRO rules.

[14] Absent a bona fide error as defined above, the exemption does not apply to a broker-dealer's mere failure to execute a not-held order in accordance with a customer's expectations.

[15] *See* Exchange Act Section 11A(a)(1)(C)(i) and (iv) (assuring efficient execution of securities transactions and the practicability of executing investors' orders in the best market are two of the primary objectives for the national market system).

[16] 17 CFR 200.30–3(a)(82).

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting from Rule 611(a) certain transactions that offer print protection to displayed customer orders when trades are reported at prices inferior to such orders. The exemption is designed to promote efficiency and the best execution of investor orders by allowing trading centers to offer beneficial executions to their customers that have offered liquidity that is immediately and automatically accessible in the public markets, without the trading centers incurring additional costs to meet the requirements of Rule 611(a).

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of displayed quotations in NMS stocks. Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 611(b)(6) provides an exception for a trade-through transaction effected by a trading center that simultaneously routes an intermarket sweep order (''ISO'') to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. Rule 611(b)(5) provides an exception for a trade-through transaction that is an execution of an ISO. Finally, Rule 611(c) requires that the trading center, broker, or dealer responsible for the routing of an ISO take reasonable steps to establish that such order meets the definition of an ISO in Rule 600(b)(30).[5]

The Trading Committee of the Securities Industry and Financial Markets Association (''SIFMA'') has requested that the Commission exempt certain print protection transactions from Rule 611(a).[6] According to the SIFMA Exemption Request, print protection is the mechanism through which broker-dealers may elect to execute a displayed order at a price that is better than a reported trade in the same security on a different market.[7] The ability of broker-dealers to offer print protection to orders will become more difficult under Rule 611 when the price of the print protection transaction is inferior to one or more protected quotations at the time of execution. The SIFMA Exemption Request asserts that, absent an exemption, broker-dealers will not be able to provide print protection to orders in these circumstances.

As an example, the SIFMA Exemption Request supposes that Firm A represents an order to buy 1000 shares at $49.90, and it is displayed on Automated Trading Center X, which currently shows a top-of-book (''TOB'') protected bid of $50 for 1000 shares. Automated Trading Center Y shows a TOB protected bid of $49.80 for 1000 shares. A broker-dealer wants to sell 2000 shares, and it sends an ISO to sweep the TOB protected quotes across the automated trading centers. The 1000 shares at $50 at Automated Trading Center X are filled, and the 1000 shares at $49.80 at Automated Trading Center Y are filled. In contrast, the order represented by Firm A and displayed on Automated Trading Center X does not receive a fill, even though its $49.90 price is better than the $49.80 order executed by Automated Trading Center Y, because the $49.80 quote was the TOB in Automated Trading Center Y. Firm A wants to provide print protection for its customer and execute the displayed order but, depending on the new national best protected bid and offer, filling the order at $49.90 may violate Rule 611.

When customer orders contribute to price discovery by being displayed in whole or in part, SIFMA believes that broker-dealers should be allowed to elect to execute these orders for their customers without violating Rule 611.[8] It asserts that the requested exemption will promote greater price discovery in the securities markets by encouraging the display of limit orders. The requested exemption would be available for a broker-dealer that offers its customers print protection to use at the broker-dealers' election, and broker-dealers would not be required to provide print protection.

III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through is the execution of an order that meets the following terms and conditions (''Print Protection Transaction''):

(1) The order is displayed in whole or in part by an automated trading center (as defined in Rule 600(b)(4) of Regulation NMS) that directly displays protected quotations (as defined in Rule 600(b)(57) of Regulation NMS);

(2) After the order is displayed, a transaction (''Triggering Transaction'') is reported pursuant to a transaction reporting plan (as defined in Rule 600(b)(32) of Regulation NMS) at a price that is inferior to the price of the displayed order;

(3) The Triggering Transaction is reported as qualifying for the exception for ISOs in paragraphs (b)(5) or (b)(6) of Rule 611;

(4) The trading center executes the order promptly after the Triggering Transaction is reported;

(5) The contra side of the execution of the order is provided by a broker-dealer who has responsibility for the order;

(6) The size of the transaction does not exceed the total of the displayed size and reserve size of the order displayed on the automated trading center; and

(7) The trading center establishes, maintains, and enforces written policies and procedures that are reasonably designed to assure compliance with the terms of this exemption, and the trading center regularly surveils to ascertain the effectiveness of such policies and procedures and takes prompt action to remedy deficiencies in them.

The exemption applies only to the execution of the Print Protection Transaction itself. It does not, for example, apply to any trades executed by the trading center that are connected with the Print Protection Transaction.

The Commission believes that an exemption for Print Protection Transactions will promote efficiency and the best execution of investor orders.[9] The exemption will allow trading centers to execute Print

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for the Commission to grant exemptions from provisions of the Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] 17 CFR 242.600(b)(30).

[6] Letter to Nancy M. Morris, Secretary, Commission, from Jerry O'Connell, Chairman, SIFMA Trading Committee, dated May 1, 2007 (''SIFMA Exemption Request'').

[7] *Id.* at 2.

[8] *Id.* at 4.

[9] *See* Exchange Act Section 11A(a)(1)(C)(i) and (iv) (assuring efficient execution of securities transactions and the practicability of executing investors' orders in the best market are two of the primary objectives for the national market system).

Protection Transactions without a requirement to prevent trade-throughs of the current protected quotations or to qualify for one of the exceptions in Rule 611(b). It thereby will minimize the expense incurred by trading centers to offer beneficial transactions to customers when such customers have contributed to public price discovery by displaying trading interest at a price and offering immediately accessible liquidity at such price.

Promoting the display of customer limit orders and public price discovery were primary objectives of Rule 611.[10] The trade-through protection of Rule 611, however, is limited to the best bids and offers (''BBOs'') displayed by automated trading centers. The Commission did not adopt a proposal to extend trade-through protection to certain ''depth-of-book'' quotations outside a trading center's BBOs, but noted that a number of commenters believed that enhanced order interaction with depth-of-book quotations would likely result even if the proposal were not adopted.[11] These commenters asserted that competition and best execution responsibilities would lead market participants to voluntarily access depth-of-book quotations in addition to quotations at BBOs. The Commission noted that such a competition-driven outcome would benefit investors and the markets in general.[12]

Print protection offered by trading centers is an additional competition-driven factor that can improve the execution of depth-of-book quotations and thereby promote price discovery. The Commission therefore believes that the exemption is fully consistent with the policies of Rule 611. The terms of the exemption are designed to achieve this goal. The customer's order must be displayed in whole or in part by an automated trading center that displays protected quotations. An automated trading center is required to offer immediate and automatic access to its displayed quotations, including both the displayed size and any reserve (*i.e.*, undisplayed) size of such quotations.[13] The size of a Print Protection Transaction cannot exceed the total of the displayed size and reserve size of the customer's order. Given that those who seek to trade in large size often are unwilling to display the full extent of their trading interest because of the risk of causing an adverse price movement, the Commission believes it is appropriate to allow Print Protection Transactions to protect both displayed size and reserve size of customer orders. As a result, customers will be rewarded for displaying some of their trading interest at a particular price, while also providing immediately available liquidity at such price that is undisplayed.[14] Finally, the trading center must execute the Print Protection Transaction promptly after the Triggering Transaction, the contra side of the execution of the order must be provided by a broker-dealer who has responsibility for the order, and the Triggering Transaction must be identified as qualifying for the ISO exceptions in paragraphs (b)(5) or (b)(6) of Rule 611. These exceptions indicate that ISOs were routed to execute against all protected quotations with prices superior to the price of the Triggering Transaction, but may not have satisfied the full extent of the customer's order. If they did not, the trading center will be allowed to offer print protection and give the customer's order a beneficial execution.

For the foregoing reasons, the Commission finds that granting the foregoing exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through qualifies as an Print Protection Transaction, as defined above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11442 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

[10] *See, e.g.*, NMS Adopting Release, 70 FR at 37501.

[11] NMS Adopting Release, 70 FR at 37530.

[12] *Id.*

[13] *See* Rule 600(b)(4)(i) (automated trading center must be capable of displaying automated quotations); Rule 600(b)(3)(ii) (automated quotation must be immediately and automatically accessible); Regulation NMS Adopting Release, 70 FR at 37534 n. 313 (automated quotation ''must be immediately and automatically accessible up to its full size, which will include both the displayed and reserve size of the quotation'').

[14] *See* NMS Adopting Release, 70 FR at 37514 (noting common use of ''pinging'' orders—marketable orders with sizes greater than displayed size that seek to access both displayed and reserve liquidity at automated trading centers).

[15] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55880; File No. SR–Amex–2007–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Market Data Fees for AMEX Real-Time Trade Price Service

June 8, 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 May 18, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to establish a one-year pilot program to disseminate AMEX Real-Time Trade Prices, a new Amex-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''AMEX Trade Prices'') and to establish a flat monthly fee for that service. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filings with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Amex provides real-time last-sale information for transactions executed on the Exchange to a Securities Information Processor known as the Consolidated Tape Association's (''CTA'') Network B. Amex's last-sale information is consolidated with the last-sale information generated by other markets trading its securities and is disseminated by CTA to market data vendors. The revenue generated by the dissemination of consolidated last-sale information is shared among the CTA participants in accordance with the CTA Plan. The CTA Plan also allows, free of charge, the dissemination of 20-minute delayed consolidated last-sale data to market data vendors. The real-time consolidated last-sale data is used by industry professionals to make trading and order routing decisions. Rule 603(c)(1) of Regulation NMS specifies that only consolidated data be used to support trading and order routing functionality. On the other hand, casual investors have traditionally relied upon the free 20-minute delayed consolidated last-sale data to ''get a feel'' for the market in a security or to price a portfolio.

The Exchange now proposes to establish a program in which it would allow the redistribution of Amex-only last-sale prices on a real-time basis. The service would be known as the AMEX Real-Time Trade Price service and provide the last-sale prices of transactions that take place on the Exchange. During the pilot program, the AMEX Real-Time Trade Price service would allow Internet service providers, traditional market data vendors, and others ''AMEX-Only Vendors'' to make available AMEX Trade Prices on a real-time basis.[3] The AMEX Real-Time Trade Price information would include last-sale prices for all securities that are traded on AEMI. It would include prices, and may include the trade condition code if the customers desire. It would not include bid/offer quotations.

The proposed pilot program for AMEX Real-Time Trade Prices responds to the requirements for distribution of real-time last-sale prices over the Internet for reference purposes, rather than as a basis for making trading decisions. The Exchange contemplates that Internet service providers with a substantial customer base and traditional vendors with large numbers of less active investors are potential subscribers to AMEX Real-Time Trade Prices. The Exchange believes that AMEX Real-Time Trade Prices would replace delayed last-sale prices for many casual investors.

The Exchange believes that, while vendors want AMEX real-time, last-sale prices for widespread Internet distribution, they also want to eliminate the administrative burdens associated with the current distribution of real-time CTA prices. In addition, because these vendor services do not support trading or order-routing functionality, the vendors do not require, nor do they wish to pay for, the full spectrum of consolidated CTA information. At the same time, they recognize the quality and branding value of an AMEX print. In response, the Exchange proposes the AMEX Trade Price program feature a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Exchange proposes to establish a flat monthly fee of $25,000 that would entitle an AMEX-Only Vendor to receive access to the AMEX Real-Time Trade Prices datafeed. The AMEX-Only Vendor may use that access to provide unlimited AMEX Trade Prices to an unlimited number of the AMEX-Only Vendor's subscribers and customers. It may also syndicate the service to an unlimited number of other Web site proprietors (as described below). The Exchange would not impose any device or end-user fee for the AMEX-Only Vendor's distribution of AMEX Trade Prices.

It is proposed that the AMEX-Only Vendor agree to identify the AMEX Trade Price by placing the text ''AMEX Data'' in close proximity to the display of each AMEX Trade Price or series of AMEX Trade Prices. The flat fee would enable the AMEX-Only Vendor to make AMEX Trade Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users. The flat fee would enable Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution.

The Exchange has determined to allow AMEX-Only Vendors to provide AMEX Real-Time Trade Prices to their subscribers and customers without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange would require AMEX-Only Vendors to provide a readily visible hyperlink that would send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services. The Exchange proposes to require AMEX-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA and CQ Plans require recipients of the Network B datafeeds to enter (the ''Network B Vendor Form''). The Network B Vendor Form would authorize the AMEX-Only Vendor to provide the AMEX Real-Time Trade Prices service to its subscribers and customers.

The Exchange proposes to supplement the Network B Vendor Form with an Exhibit C that would provide above-described terms and conditions that are unique to the AMEX Real-Time Trade Prices service. The supplemental terms would govern things such as the restriction against providing the service in the context of a trading or order-routing service, the replacement of end-user agreements with a hyperlink to a notice, the substance of the notice, the ''AMEX Data'' labeling requirement, and the AMEX-Only Vendor's obligation to impose the below-described Syndication Requirements on other Web site proprietors.

In addition to allowing an AMEX-Only Vendor to make AMEX Trade Prices available on its Web site, the Exchange further proposes that the program would allow AMEX-Only Vendors to syndicate the service by arranging with other Web site proprietors to link any such other proprietor's Web site to the AMEX-Only Vendor's AMEX Trade Prices service. The Exchange is proposing a separate fee of $25,000 per month for an AMEX-Only Vendor that enters into an agreement to syndicate the AMEX Trade Prices service to other Web site proprietors. The Exchange would allow an AMEX-Only Vendor to syndicate its AMEX Trade Price services in this manner to the AMEX-Only Vendor or to the other Web site proprietors, subject to the following ''Syndication Requirements'':

1. Each other Web site proprietor must provide the same readily visible hyperlink that the AMEX-Only Vendor must provide on its Web site: The hyperlink that will send the end-user to

[3] The Exchange notes that it would make the AMEX Trade Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

a warning notice about the end-user's receipt and use of market data.[4]

2. Each other Web site proprietor must identify the AMEX Trade Price by placing the text ''AMEX Data'' in close proximity to the display of each AMEX Trade Price or series of AMEX Trade Prices, just as Amex proposes to require AMEX-Only Vendors to do.

3. Each other Web site proprietor must identify the AMEX-Only Vendor as the source of the AMEX Trade Price data in close proximity to the display of each AMEX Trade Price or series of AMEX Trade Prices.

4. Each other Web site proprietor must agree not to provide AMEX Trade Prices in a context in which a trading or order-routing decision can be implemented unless the other Web site proprietor also provides consolidated displays of Network B last-sale prices available in an equivalent manner.

The Exchange believes that the AMEX Real-Time Trade Prices service would (1) provide a low-cost service that would make real-time prices widely available to many millions of casual investors; (2) provide vendors with a real-time substitute for delayed prices; and (3) relieve vendors of most administrative burdens.

Prior to the end of the one-year pilot program, the Exchange would assess its experience with the program. It either would submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or would announce publicly that it does not seek to extend the pilot program beyond the one-year termination date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[5] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4),[6] which requires that the rules an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

A. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml;* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2007–49 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 No. SR–Amex–2007–49. 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 at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–49 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11489 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55882; File No. SR–CBOE–2007–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to CBOE and CBSX Market Data Fees

June 8, 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 May 29, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described

---

[4] While Amex will not dictate the exact terms of this warning notice (which is consistent with the CTA delayed data service), it will require the AMEX-Only Vendors to state that the display of AMEX Data may not be used in a context in which a trading or order-routing decision can be implemented. *See* e-mail dated June 7, 2007, from Claire McGrath, Senior Vice President and General Counsel, Amex, to Michael Gaw, Assistant Director, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to amend fees relating to CBOE's TickerXpress market data delivery service. The Exchange also proposes to amend the CBOE Stock Exchange (''CBSX'') Fees Schedule to establish a market data infrastructure fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. TickerXpress Fees

TickerXpress (''TX'') is an Exchange service that supplies market data to Exchange market-makers trading on the Hybrid Trading System. The Exchange proposes to amend its Fees Schedule as it relates to TX fees.

Currently, the Exchange charges members receiving TX market data a fee of $100 per month and charges members receiving ''enhanced'' TX market data a fee of $200 per month. Enhanced TX data are data that have been processed so that they can be used by market-makers utilizing quoting software. Recently, the Exchange's costs to process TX data have increased. The Exchange proposes to eliminate the $100 per month and $200 per month TX fees and replace them with a fee of $300 per month for enhanced TX market data only. The proposed fee would help compensate the Exchange for its increased costs in providing this data to Exchange members.

From time to time one or more third-party service providers may make available for license to TX users software for the use and display of market data (''TX Software''). The Exchange may also in the future make such software available to TX users. The Exchange proposes to adopt a fee of $100 per TX user per month for use of TX Software. The proposed fee will help the Exchange offset the license fees the Exchange pays its third-party service provider for providing the TX Software to Exchange members or offset the Exchange's own costs in making such software available.

b. CBSX Market Data Infrastructure Fee

CBSX has contracted with a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data. The monthly cost to CBSX for maintaining the infrastructure to help make this market data available is $19,400. CBSX proposes to assess CBSX participants that receive this market data a monthly fee to recoup the fees CBSX pays for providing the infrastructure to make this market data available. The amount of the monthly fee shall be equal to $19,400 divided by the number of CBSX participants receiving the data.

The Exchange implemented the proposed fee changes on June 1, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(4) [4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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.

[3] 15 U.S.C. 78f.

[4] 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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder. 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 No. SR–CBOE–2007–54 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–CBOE–2007–54. 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

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

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 the CBOE. 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–CBOE–2007–54 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11488 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55881; File No. SR–CBOE–2007–60]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the CBOE Stock Exchange

June 8, 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 May 31, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 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 modify its fees applicable to the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBSX fee schedule lists the fees applicable to trading on CBSX. The transaction fees are based on whether the executing member is ''taking'' liquidity or ''making'' liquidity in connection with the transaction. A taker is charged a rate that varies between $0.26 to $0.29 per 100 shares executed based on the amount of total volume executed by that user. A maker receives a rebate of $0.24 per 100 shares, except that Remote Market-Makers and Designated Primary Market-Makers receive enhanced rebates if they meet certain market quality bid/ask standards (called Liquidity Provider Guidelines or ''LPGs''). This filing modifies the LPGs in three respects: (1) The LPGs will be measured on a daily basis instead of a monthly basis; (2) *all* Remote Market-Makers and Designated Primary Market-Makers in a product would qualify for the enhanced rebate for trades executed during the measurement period if the LPGs are met for that product for 90% of the time during the measurement period (*i.e.*, each day); and (3) the outside quote requirements of the LPGs are being eliminated. The changes took effect June 1, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(4)[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. 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 No. SR–CBOE–2007–60 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–CBOE–2007–60. This file number should be included on the subject line if e-mail is used. To help the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

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 the CBOE. 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–CBOE–2007–60 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11506 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55879; File No. SR–NASD–2007–036]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Amendment to New NASD Rule 2342 (SIPC Information)

June 8, 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 June 1, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has filed the proposal as a ''non-controversial'' 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 receipt of this filing by 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

NASD is proposing to amend Rule 2342 (SIPC Information) to make a technical amendment to clarify the categories of members that are excepted from the scope of the rule. Below is the text of the proposed rule change.[5] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2342. SIPC Information

All members, except those members: (a) That pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; [and] *or* (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

On May 10, 2006, the Commission approved new Rule 2342 (SIPC Information) to require NASD members, except those members (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (''SIPA'') are excluded from membership in the Securities Investor Protection Corporation (''SIPC'') and that are not SIPC members; or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to provide new customers, and all customers annually, with certain information about SIPC.[6] As approved, however, the rule text could be mistakenly read to except only those members that are excluded from membership in SIPC and are not SIPC members, and *also have* a business consisting exclusively of investment products that are ineligible for SIPC protection. Accordingly, NASD is filing this proposed rule change to delete the ''and'' between paragraphs (a) and (b) of new Rule 2342 and replace it with an ''or'' to clarify that the rule excepts from its requirements a member that meets the conditions in either paragraphs (a) or (b).

NASD has filed the proposed rule change for immediate effectiveness. The effective date of new Rule 2342, as amended by this proposed rule change, is November 6, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Rule 2342.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any

[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] The underlying rule text used in this proposed rule change is based on new NASD Rule 2342 which was approved by the SEC on May 10, 2007. *See* Securities Exchange Act Release No. 55737 (May 10, 2007), 72 FR 27606 (May 16, 2007) (Approval Order).

[6] *See supra* note 5.

[7] 15 U.S.C. 78o–3(b)(6).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[8]

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

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–NASD–2007–036 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–NASD–2007–036. 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 NASD.

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 the File Number SR–NASD–2007–036 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11441 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55886; File No. SR–NASD–2007–027]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to SEC Section 31-Related Fees

June 8, 2007.

On April 17, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to allow member firms to voluntarily submit, within six months of the effective date of the proposal, funds previously accumulated by member firms to satisfy their, and subsequently NASD's, obligation to remit SEC Section 31-related fees, to NASD. The proposed rule change was published for comment in the **Federal Register** on May 9, 2007.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change.

Pursuant to Section 31 of the Act [5] and SEC Rule 31,[6] NASD and the national securities exchanges (collectively ''SROs'') are required to pay a transaction fee to the SEC that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, NASD assesses its clearing and self-clearing members a regulatory fee in accordance with Section 3 of Schedule A of the NASD By-Laws, which mirrors the SEC Section 31 fee in scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

NASD states that reconciling the amounts billed by NASD to member firms and the amounts collected by member firms from their customers historically has been difficult, causing surpluses to accumulate at some member firms (referred to as ''accumulated funds''). These accumulated funds were not remitted to NASD, despite the fact that these charges may have been previously identified as ''Section 31 Fees'' or ''SEC Fees'' by certain firms.[7]

Prompted by a November 2004 Commission letter requesting an NASD analysis of and plan for addressing the accumulated funds issue, NASD surveyed 240 member clearing and self-

---

[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 55697 (May 2, 2007), 72 FR 26432 (May 9, 2007).

[4] *See* Letter from Mary Yeager, Assistant Secretary, New York Stock Exchange LLC (''NYSE'') to Nancy M. Morris, Secretary, Commission, dated June 5, 2007 (''NYSE Comment'').

[5] 15 U.S.C. 78ee.

[6] 17 CFR 240.31.

[7] NASD's rule also previously referred to this fee as an ''SEC Transaction Fee.'' The SEC stated in its release adopting new Rule 31 and Rule 31T that ''it is misleading to suggest that a customer or [self-regulatory organization] member incurs an obligation to the Commission under Section 31.'' Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, NASD amended its rule to refer to this fee as a ''Regulatory Transaction Fee.'' *See* Securities Exchange Act Release No. 50274 (August 26, 2004), 69 FR 53757 (September 2, 2004) (SR–NASD–2004–129). Further, NASD issued guidance to ensure there is no confusion in the marketplace regarding NASD's ''Regulatory Transaction Fee'' and the ''SEC's Section 31 Fee.'' *See Notice to Members* 05–11 (February 2005) and *Notice to Members* 04–63 (August 2004).

clearing firms to review their practices regarding the collection of such fees from customers, discovering that over half of the firms surveyed did not have an accumulated funds balance. NASD worked with the other SROs to recommend a potential solution to allow NASD member firms to resolve title to the accumulated funds and, in the process, concluded that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.[8]

Consequently, NASD has proposed interpretive material (''IM'') that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds (collected for purposes of paying an ''SEC Fee'' or ''Section 31 Fee'') to NASD. These funds then would be used to pay NASD's current Section 31 fees in conformity with prior representations made by member firms. To the extent the payment of these historically accumulated funds is in excess of the fees due the SEC from NASD under Section 31 of the Act, such surplus would be used by NASD to offset other NASD regulatory costs. The effective date of the proposed rule change is December 8, 2007, six months following the date of this approval order. Moreover, the IM will automatically sunset on June 8, 2008, six months after the effective date.

The Commission received one comment letter regarding the proposed rule change, from NYSE. NYSE acknowledged that the proposal provides ''member firms a ready and efficient means'' for dealing with accumulated funds but questioned ''whether there is a nexus between amounts accumulated by NASD member firms and sales effected through facilities of the NASD or Nasdaq (prior to the separation of NASD from Nasdaq and Nasdaq's registration as an exchange)'' and whether it would be feasible for member firms to correlate each execution market with a specific portion of the accumulated funds held by the firm.[9] As a result, NYSE argued that ''the fairest way to address this issue is for all exchanges to adopt procedures similar to those in the [NASD proposal], and to allow a member firm to remit accumulated funds to any SRO of which it is a member'' and indicated its intention to submit a proposed rule change similar to the NASD proposal that would allow NYSE members and member organizations to remit all or a portion of their accumulated funds to the NYSE to permit the Exchange to make payments required by Section 31.[10]

After carefully considering the proposal and the comment submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that this NASD program will provide a reasonable means for member firms to dispose of any accumulated funds they may have in their possession.[13] The Commission notes that, because the program is voluntary, it imposes no obligation on any NASD member that believes that accumulated funds should be retained or disposed of in another manner. The NYSE Comment does not raise any issue that would preclude approval of the NASD proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2007–027) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11504 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

[8] NASD had asked all surveyed firms whether they could ''identify and relate the funds to specific customers on a transaction by transaction basis.'' The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level.

[9] *See* NYSE Comment at 1.

[10] *Id.* at 2.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(6).

[13] The Commission notes that it has previously issued guidance that any fee collected by broker-dealers from their customers should not be referred to as an ''SEC Fee'' or ''Section 31 Fee.'' *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). If broker-dealers adhere to this guidance, issues related to accumulated funds should not recur.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55878; File No. SR–NASD–2006–074]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities

June 7, 2007.

On June 12, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 2790 as described below. The proposed rule change was published for comment in the **Federal Register** on January 25, 2007.[3] The Commission received one comment on the proposal.[4] On June 4, 2007, the NASD submitted a response to the comment.[5] This order approves the proposed rule change.

I. Description of the Proposal

NASD Rule 2790 provides that a member or a person associated with a member may not sell a new issue to any account in which a restricted person has a beneficial interest, or purchase a new issue in any account in which such member or associated person has a beneficial interest. Currently, Rule 2790(d)(1) provides that these prohibitions do not apply to new issues that are specifically directed by the issuer to restricted persons, provided that issuer-directed securities are not sold to or purchased by an account in which broker-dealer personnel, finders and fiduciaries, or certain members of their immediate family, have a beneficial interest, unless such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. The NASD is proposing to amend Rule 2790(d)(1) to prohibit issuer-directed allocations of new issues to broker-dealers.

The NASD is also proposing to amend Rule 2790(d) by adding a new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55128 (January 18, 2007), 72 FR 3453.

[4] *See* letter from Morgan, Lewis Bockius LLP to Nancy M. Morris, Secretary, Commission, dated February 15, 2007.

[5] *See* letter from Afshin Atabaki, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, Commission, dated June 4, 2007 (''Response Letter'').

subparagraph to Rule 2790(d), to be numbered Rule 2790(d)(2), which would provide that the prohibitions on the purchase and sale of new issues do not apply to securities that are specifically directed by the issuer to restricted persons, provided that a broker-dealer: (A) Does not underwrite any portion of the offering; (B) does not solicit or sell any new issue securities in the offering; and (C) has no involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering.

II. Comments

The Commission received one comment on the proposal, which expressed support for the proposal, but requested clarification regarding two points under proposed NASD Rule 2790(d)(2).[6]

First, the commenter requested clarification that a new issue undertaken by an issuer may qualify for the exception provided for by proposed Rule 2790(d)(2), notwithstanding that the issuer has engaged a broker-dealer to provide advisory services, including advice regarding capital structure and capital raising, so long as no broker-dealer has engaged in the conduct specified in proposed Rule 2790(d)(2)(A)–(C) set forth above. The NASD noted in the Response Letter that nothing in proposed subparagraph (d)(2) would prevent an issuer from engaging a broker-dealer to provide such advisory services or other limited services, so long as the conditions set forth in the subparagraph continue to be satisfied.

Second, the commenter requested clarification that a purchaser may reasonably rely on a representation from an issuer to the effect that no broker-dealer has engaged in any of the conduct specified in proposed Rule 2790(d)(2)(A)–(C) with respect to the offering, so long as the purchaser neither knows, nor has reason to know, that the representation is false. In the Response Letter, the NASD stated that it believes that, for purposes of compliance with proposed Rule 2790(d)(2), a member or associated person that wishes to purchase new issues in such offerings may rely on a written representation obtained in good faith from the issuer that the conditions in proposed subparagraph (d)(2) are satisfied, so long as the member or associated person does not believe, or have reason to believe, that such representation is inaccurate.

[6] *See supra* note 4.

III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[7] the requirements of Section 15A of the Act,[8] in general, and Section 15A(b)(6) of the Act,[9] in particular, which requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change strikes a reasonable balance between providing issuers with flexibility in directing shares and improving the capital raising process while also preserving the objectives of NASD Rule 2790.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2006–074) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11505 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55877; File No. SR–Phlx–2006–87]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Options Exchange Officials

June 7, 2007.

I. Introduction

On December 14, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to eliminate floor officials from the Exchange and establish a new category of Exchange staff called Options Exchange Officials (''OEOs''). The Phlx filed Amendment No. 1 to the proposed rule change on February 23, 2007, and filed Amendment No. 2 to the proposed rule change on March 15, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 6, 2007.[3] The Commission received no comments on the proposal. The Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change

The Exchange proposes to create the new category of Exchange staff, OEOs, who will replace the Exchange's floor officials, and assume all authority and responsibility currently handled by the Exchange's floor officials. As a result, floor officials would cease to exist on the Exchange. Further, the Exchange's decision making process would be streamlined in that some rulings that currently require the concurrence of two floor officials, or two floor officials with the concurrence of a Market Surveillance officer, will now be made by one OEO. The role of the Exchange's Referee, however, will remain unchanged. The Exchange will make the proposed rule changes operative shortly after Commission approval of the proposal, and will notify members at least three business days in advance of such operative date.[4]

Current Floor Official Process

Pursuant to Exchange By-Law Article VIII, floor officials are members who are designated by the Chairpersons of the Exchange's Options Committee and Foreign Currency Options Committee and are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. Among other things, floor officials may impose penalties, as applicable, for breaches of rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, floor officials may, in accordance with Exchange rules, rule on trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55552 (March 29, 2007), 72 FR 17212.

[4] Telephone conversation on May 7, 2007 between Richard Rudolph, Vice President and Counsel, Phlx and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission.

disputes, nullify or adjust the terms of executed trades, and grant relief to members and member organizations from certain Exchange requirements. The Exchange's Referee[5] currently may review floor official rulings concerning the nullification or adjustment of transactions in accordance with Exchange Rule 124(d), and may act in the capacity of a floor official respecting initial rulings concerning requests for relief from certain Exchange rules.[6] The granting of initial requests for relief, whether made by a floor official, or the Referee acting in the capacity of a floor official, are final rulings and may not be appealed.

OEOs

An OEO will be an Exchange staff member or contract employee designated as an OEO by the Exchange's Chief Regulatory Officer (''CRO''). A list of OEOs will be displayed on the Exchange's Web site, and will be maintained and updated by the Exchange's Referee.[7] The jurisdiction of the OEOs will be limited to Phlx's options trading floor and systems, and OEOs will be located on the Exchange's options trading floor and report to the CRO. The Exchange represents that OEOs will be members of the Exchange's regulatory staff, including the on-floor surveillance staff, who have sufficient expertise to act in the capacity of an OEO as determined by the CRO.

Duties of OEOs

Under the proposal, OEOs will be authorized to fulfill the duties currently performed by floor officials. In some instances, one OEO will be authorized to make decisions that currently require the concurrence of two floor officials, or two floor officials with the concurrence of a Market Surveillance officer. Among other things, OEOs will be authorized to rule on trading disputes occurring on the options trading floor, which could result in the adjustment or nullification of executed transactions, and to nullify or adjust executed transactions in the case of an obvious error.

OEOs also will be authorized to rule on initial requests for relief from the requirements of certain Exchange rules, such as rules relating to bid/ask differentials, disengagement of automatic execution systems, the determination that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement, and trading halts, openings, and reopenings. An OEO will have the authority to direct the opening of a series at a price that falls outside of the Exchange's established parameters where necessary to ensure a fair and orderly market, and to rule on trading halts, rotations, and reopenings following a trading halt.

Further, pursuant to the proposal, an OEO will be authorized to impose on Exchange members, member organizations and participants, participant organizations, and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange. An OEO also may exclude such persons and organizations from the trading floor for breaches of such regulations that occurred on the trading floor or premises immediately adjacent to the trading floor if any such person poses an immediate threat to the safety or persons or property or are seriously disrupting Exchange operations, or if any such person is in possession of a firearm.

Procedures for Review of OEO Rulings

The role of the Exchange's Referee will remain unchanged. The Referee may act in the capacity of an OEO respecting initial rulings concerning requests for relief pursuant to Phlx Rule 124, Commentary .02, such as relief from the Exchange's quote spread parameters. Such rulings currently are, and will continue to be, final and may not be appealed to the Exchange's Board of Directors. Also, floor official rulings that currently may be appealed to the Referee, such as adjustments or nullifications of executed transactions in the case of an obvious error, likewise may be appealed to the Referee when such rulings are made by an OEO pursuant to the proposal. A Referee will not be permitted to rule on an appeal from his or her own decision.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 Commission believes that the Exchange's proposal to replace floor officials with Options Exchange Officials is designed to produce a more efficient process for the resolution of disputes on the Exchange and determinations currently made by floor officials. For example, the Commission believes that by reducing, in certain instances, the number of persons required to make Exchange rulings from two floor officials, or two floor officials with the concurrence of a Market Surveillance officer, to one OEO, the proposal is designed to expedite the Exchange's decision making process. In addition, by requiring an OEO to be Exchange staff or a contract employee, the Commission believes that the proposed rule change is designed to minimize the potential conflicts of interest that may arise when a member of the Exchange is called upon to act in the capacity of a floor official and to make a decision on a matter involving one or more other members.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2006–87), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11440 Filed 6–13–07; 8:45 am]

BILLING CODE 8010–01–P

[5] The Exchange's ''Referee'' is an employee of the Exchange, or an independent contractor, who is approved by the Board of Governors on the recommendation of the Audit Committee. *See* Phlx Rule 124, Commentary .02.

[6] *See id.*

[7] *See* proposed Phlx Rule 1(pp).

[8] *See* proposed Phlx Rule 124, Commentary .01.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0368]

New England Partners Capital, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that New England Partners Capital, L.P., One Boston Place, Suite 2100, Boston, MA 02108, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the sale of a portfolio concern to an Associate, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). New England Partners Capital, L.P., proposes to sell its interest in Elmet Technologies, Inc., 1560 Lisbon Street, Lewiston, ME 04240, to Harbor Acquisition Corporation, One Boston Place, Suite 3630, Boston, MA 02108, a publicly traded Special Purpose Acquisition Corporation listed on the American Stock Exchange under the ticker symbol HAC.

The transaction is brought within the purview of § 107.730(a) of the Regulations because Harbor Acquisition Corporation is an Associate of New England Partners Capital, L.P., as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 24, 2007.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E7–11428 Filed 6–13–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5806]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State announces the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) to be held on July 11, 2007, from 2:30 p.m. to 4 p.m., in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Richard E. Wiley of Wiley Rein LLP. Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, and other senior U.S. Government officials will address the meeting.

The main focus of this meeting will be to report on recent bilateral discussions with China's Ministry of Information Industries and with Mexico's Ministry of Communications and Transportation, as well as upcoming bilateral discussions with India's Ministry of Communications and Information Technology and with Brazil's Ministry of Communications; and also to report on recent developments regarding the President's Digital Freedom Initiative.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. They should be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, we must receive the following information from you no later than 5 p.m. on Monday, July 9, 2007 (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State that you are Requesting Pre-Clearance to a Meeting.

II. Provide the Following Information:

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Company/Agency/Organization.
4. Title at Company/Agency/Organization.
5. Date of birth.
6. Citizenship.
7. Type of ID visitor will show upon entry (from list below):
   - U.S. driver's license with photo.
   - Passport.
   - U.S. government agency ID.
8. ID number on the ID visitor will show upon entry.

Send the above information to Richard W. O'Brien by fax (202) 647–0158 or e-mail *o'brienrw@state.gov.*

Privacy Act Statement: The above information is sought pursuant to 5 U.S.C. 301 and 22 U.S.C. 2651a, 4802(a). The principal purpose for collecting the information is to assure protection of U.S. Department of State facilities. The information provided also may be released to federal, state or local agencies for law enforcement, counter-terrorism or homeland security purposes, or to other federal agencies for certain personnel and records management matters. Providing this information is voluntary but failure to do so may result in denial of access to U.S. Department of State facilities.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Richard W. O'Brien, Executive Secretary of the Committee, at (202) 647–4736 or *o'brienrw@state.gov.*

General information about ACICIP and the mission of International Communications and Information Policy at the Department of State is available at our Web site: *http://www.state.gov/e/eeb/adcom/c667.htm.*

Dated: June 1, 2007.

Richard W. O'Brien,

Executive Secretary, ACICIP, Department of State.

[FR Doc. E7–11511 Filed 6–13–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5759]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5

U.S.C. app 2 section 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on July 12, 2007, at the Department of State, Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 section 10(d), and to 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament and international security, and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding international security and nuclear proliferation.

For more information, contact Brandy Buttrick, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647–9336.

Dated: May 29, 2007.

George W. Look,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. E7–11512 Filed 6–13–07; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending, June 1, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28359.

Date Filed: May 29, 2007.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 537—Cargo Composite Expedited Resolutions. (Memo 0595). Intended effective date: 1 July 2007.

Docket Number: OST–2007–28360.

Date Filed: May 29, 2007.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 538—Cargo Composite Resolutions. (Memo 0596). Intended effective date: 1 October 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–11422 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 1, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28387.

Date Filed: May 31, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 2007

Description: Application of G5 Executive AG (''GS Executive'') requesting an exemption and an amended foreign air carrier permit authorizing G5 Executive to engage in charter foreign air transportation of persons, property and mail to the full extent permitted by the U.S.-Switzerland open skies agreement, using large aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–11426 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rock and Walworth Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 14/STH 11 between Janesville, in Rock County, and IH 43 near Darien, in Walworth County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Chandler, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive—Suite 100, Madison, Wisconsin, 53719–2814; telephone: (608) 829–7514. You may also contact Mr. Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965; telephone: (608) 267–9527.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661, by using a computer, modem, and suitable communications software. Internet users may reach the Office of the **Federal Register**'s home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to evaluate improvement alternatives for USH 14/STH 11. The project begins at USH 14 on the northwest side of Janesville, in Rock County, and extends approximately 25 miles to IH 43 near Darien, in Walworth County, Wisconsin. The EIS will be prepared in accordance with 40 CFR part 1500 and FHWA regulations.

Improvements to the highway are considered necessary to lessen congestion, improve safety, and provide efficient regional connections.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives within the study area. Possible improvement alternatives include a no build alternative, which assumes the continued use of the existing facility with the improvements necessary to ensure its continued use; an improved 2-lane highway with intersection improvements, passing lanes, and wider shoulders; the addition of lanes to create a 4-lane highway; and evaluation of one or more alternatives that follow new alignments. In addition, alternatives for a potential by-pass connecting USH 14 and STH 11 on the west side of Janesville will be evaluated. These alternatives include 2 and 4-lane connections along various alignments, as well as consideration of a freeway type highway.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. Local officials and the public will be given many opportunities to provide comments during the course of the study. There will be public information meetings throughout the data gathering and development and evaluation of alternatives. Two public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review prior to the hearings. Several newsletters will be sent to keep local residents informed of the study's progress. A project Web site has been established to help provide information on the project. The Web site address is *http://www.dot.wisconsin.gov/projects/d1/wis11study/index.htm.*

In addition, two committees have been formed, a Technical Committee and an Advisory Committee, that will meet throughout the life of the study. These committees are made up of local government officials and agency personnel and they will be responsible for helping define the project purpose and need, as well as providing input and comments on alternatives.

The anticipated format for the EIS will be Screening Worksheets rather than the typical narrative form. The Wisconsin Department of Transportation has developed a series of Environmental Screening Worksheets, which are divided into Basic Sheets and Factor Sheets. The Screening Worksheets provide a flexible means of addressing the requirements for an Environmental Document.

To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT**.

Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. It is also Federal and State policy that no group of people bears the negative consequences of this action in a disproportionately high and adverse manner without adequate mitigation.

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: May 24, 2007.

Mark R. Chandler,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E7–11487 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2003–15864]

Request Public Comment and Office of Management and Budget Approval for a New Information Collection

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice requests public participation in the Office of Management and Budget (OMB) approval process for a new PHMSA information collection. This proposed information collection is a survey of hazardous liquid pipeline operators to obtain information on unregulated low-stress hazardous liquid pipeline characteristics. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the related burden.

DATES: Anyone may submit written comments on this proposed information collection activity by August 13, 2007. PHMSA will consider late-filed comments to the extent possible.

ADDRESSES: Reference Docket No. PHMSA–2003–15864 and submit in one of the following ways:

(1) Submit electronic comments to the DOT Docket Web Site: *http://dms.dot.gov* or the e-GOV Web site *http://www.regulations.gov*;

(2) Fax: 1–202–493–2251;

(3) Mail: Docket Management System: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

(4) Hand Delivery: DOT Docket Management System; 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket facility is open 9 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lane Miller by phone at (405) 954–4969 or by e-mail at *Lane.Miller@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Instructions

Identify the docket number, PHMSA–2003–15864, at the beginning of your comments and send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: PHMSA posts all comments without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act

Anyone can search the electronic form of all comments received in response to 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.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477), and is on the Web at *http://dms.dot.gov*.

II. Background

The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act), enacted into law on December 29, 2006, reauthorizes PHMSA-administered pipeline safety programs for fiscal years 2007 through 2010. Section 4 of the PIPES Act requires that PHMSA issue regulations by December 31, 2007, subjecting all low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines. PHMSA currently regulates low-stress pipelines located in populated areas and crossing navigable waterways. On May 18, 2007, PHMSA published a supplemental notice of proposed rulemaking proposing to apply all Federal hazardous liquid pipeline safety regulations to rural low-stress lines meeting certain criteria (72 FR 28008).

Low-stress pipelines are pipelines operating at 20 percent or less of the specified minimum yield strength of the line pipe. PHMSA does not have data on the total extent of unregulated hazardous liquid low-stress pipelines in the United States. To address this gap in the data and to obtain a more accurate understanding of the unregulated hazardous liquid low-stress pipelines, PHMSA is requesting OMB approval to conduct a one-time information collection survey.

Operators of hazardous liquid pipelines will be surveyed about mileage (including interplant pipeline mileage), diameter, pipeline material, products transported, and location. The survey will be delivered electronically to each of the companies currently operating regulated hazardous liquid pipelines. PHMSA will also attempt to reach companies that own and/or operate currently unregulated pipelines exclusively by working with industry associations to announce and distribute the survey via electronic newsletters to association members. Respondents will be able to print an electronic version of the survey and mail a hard copy or complete the survey online. Participation in the survey will be optional.

There are 288 pipeline operators that own and/or operate regulated hazardous liquids pipelines. This population may also own and/or operate unregulated hazardous liquid low-stress pipeline. The number of pipeline operators that own and/or operate unregulated pipeline mileage exclusively is unknown. Industry experts indicate that the companies operating regulated pipelines are likely to operate most, if not all, of the unregulated low-stress hazardous liquid pipelines. Based on a pre-test of the survey, PHMSA estimates 158 operators will complete the one-time survey (55 percent response rate).

Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and the affected agencies an opportunity to comment on information collection requests. Information collection includes all work related to preparing and disseminating information related to this proposed information collection request, including completing paperwork, gathering information, and conducting telephone calls. PHMSA invites comments on any aspect of this proposed information collection. The comments may address: (1) Whether the proposed collection is necessary for PHMSA's performance; (2) the accuracy of the estimated burden; (3) ways for PHMSA to enhance the quality, usefulness, and clarity of the sought information; and (4) ways to minimize burden without reducing the quality of the collected information. PHMSA will summarize and/or include comments in the request for OMB's clearance of this proposed information collection.

Respondents: 158.

Frequency: This is a one time survey.

Estimated Average Burden per Response: 16 hours.

Estimated Total Annual Burden Hours: 2,528.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on June 8, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7–11490 Filed 6–13–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1023

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 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

DATES: Written comments should be received on or before August 13, 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: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

OMB Number: 1545–0056.

Form Number: Form 1023.

Abstract: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3) of the Internal Revenue Code. IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation.

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: 29,409.

Estimated Time per Respondents: 106 hours, 4 minutes.

Estimated Total Annual Burden Hours: 3,138,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–11431 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–99–91]

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, CO–99–91 (TD 8490), Limitations on Corporate Net Operating Loss (section 1.382–3).

DATES: Written comments should be received on or before August 13, 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 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: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1345.

Regulation Project Number: CO–99–91.

Abstract: This regulation modifies the application of the segregation rules under Internal Revenue Code section 382 in the case of certain issuances of stock by a loss corporation. The regulation provides exceptions to the segregation rules for certain small issuances of stock and for certain other issuances of stock for cash. The regulation also provides that taxpayers may make an irrevocable election to apply the exceptions retroactively.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–11432 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13094

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 13094, Recommendation for Juvenile Employment with the Internal Revenue Service.

DATES: Written comments should be received on or before August 13, 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: Recommendation for Juvenile Employment with the Internal Revenue Service.

OMB Number: 1545–1746.

Form Number: 13049.

Abstract: The data collected on Form 13094 provides the Internal Revenue Service with a consistent method for making suitability determinations on juveniles for employment within the Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and not-for-profit institutions.

Estimated Number of Respondent: 2,500.

Estimated Time per Respondents: 5 minutes.

Estimated Total Annual Burden Hours: 208.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–11433 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–90]

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 and temporary regulations, EE–113–90 (TD 8324), Employee Business Expenses Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (§ 1.62–2).

DATES: Written comments should be received on or before August 13, 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 regulation 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: Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

OMB Number: 1545–1148.

Regulation Project Number: EE–113–90.

Abstract: These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The regulations affect employees who receive payments and payors who make payments under such arrangements.

Current Actions: There is no change to these existing regulations.

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 Recordkeepers: 1,419,456.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Recordkeeping Hours: 709,728.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–11434 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice.

SUMMARY: This document contains a correction to a notice for the 2008 Tax Counseling for the Elderly (TCE) Program that was published in the **Federal Register** on Friday, June 1, 2007 (72 FR 105) providing notice of the availability.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, (202) 283–0189 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of the correction is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978.

Need for Correction

As published, the notice for the 2008 Tax Counseling for the Elderly (TCE) Program contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice for the 2008 Tax Counseling for the Elderly (TCE) Program, which was the subject of FR Doc. E7–10173, is corrected as follows:

On page 30667, column 1, in the preamble, under the caption ''Summary:'', the language ''This document provides notice of the availability of Application Packages for the 2007 Tax Counseling for the Elderly (TCE) Program.'', is corrected to read ''This document provides notice of the availability of Application Packages for the 2008 Tax Counseling for the Elderly (TCE) Program.''

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–11435 Filed 6–13–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
June 14, 2007

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1286]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The proposed revisions take into consideration comments from the public on an initial advance notice of proposed rulemaking (ANPR) published in December 2004 on a variety of issues relating to the format and content of open-end credit disclosures and the substantive protections provided under the regulation. The proposal also considers comments received on a second ANPR published in October 2005 that addressed several amendments to TILA's open-end credit rules contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Consumer testing was conducted as a part of the review.

Except as otherwise noted, the proposed changes apply solely to open-end credit. Disclosures accompanying credit card applications and solicitations would highlight fees and reasons penalty rates might be applied, such as for paying late. Creditors would be required to summarize key terms at account opening and when terms are changed. The proposal would identify specific fees that must be disclosed to consumers in writing before an account is opened, and give creditors flexibility regarding how and when to disclose other fees imposed as part of the open-end plan. Periodic statements would break out costs for interest and fees. Two alternatives are proposed dealing with the ''effective'' or ''historical'' annual percentage rate disclosed on periodic statements.

Rules of general applicability such as the definition of open-end credit and dispute resolution procedures would apply to all open-end plans, including home-equity lines of credit. Rules regarding the disclosure of debt cancellation and debt suspension agreements would be revised for both closed-end and open-end credit transactions. Loans taken against employer-sponsored retirement plans would be exempt from TILA coverage.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1286, 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 may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Amy Burke or Vivian Wong, Attorneys, Krista Ayoub, Dan Sokolov, Ky Tran-Trong, or John Wood, Counsels, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. The purposes of TILA are (1) to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

II. Summary of Major Proposed Changes

The goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The proposed changes are the result of the Board's review of the provisions that apply to open-end (not home-secured) credit. The Board's last comprehensive review of Regulation Z was in 1981. The Board is proposing changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

Applications and solicitations. The proposal contains changes to the format and content to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. The proposed changes include:

- Adopting new format requirements for the summary table, including rules regarding: Type size and use of boldface type for certain key terms, placement of information, and the use of cross-references.
- Revising content, including: A requirement that creditors disclose the duration that penalty rates may be in effect, a shorter disclosure about variable rates, new disclosures highlighting the effect of creditors' payment allocation practices, and a reference to consumer education materials on the Board's Web site.

Account-opening disclosures. The proposal also contains revisions to the cost disclosures provided at account opening to make the information more conspicuous and easier to read. The proposed changes include:

• Disclosing certain key terms in a summary table at account opening, which would be substantially similar to the table required for credit and charge card applications and solicitations, in order to summarize for consumers key information that is most important to informed decision-making.

• Adopting a different approach to disclosing fees, to provide greater clarity for identifying fees that must be disclosed. In addition, creditors would have flexibility to disclose charges (other than those in the summary table) in writing or orally.

Periodic statement disclosures. The proposal also contains revisions to make disclosures on periodic statements more understandable, primarily by making changes to the format requirements, such as by grouping fees, interest charges, and transactions together. The proposed changes include:

• Itemizing interest charges for different types of transactions, such as purchases and cash advances, and providing separate totals of fees and interest for the month and year-to-date.

• Modifying the provisions for disclosing the ''effective APR,'' including format and terminology requirements to make it more understandable. Because of concerns about the disclosure's effectiveness, however, the Board is also soliciting comment on whether this rate should be required to be disclosed.

• Requiring disclosure of the effect of making only the minimum required payment on repayment of balances (changes required by the Bankruptcy Act).

Changes in consumer's interest rate and other account terms. The proposal would expand the circumstances under which consumers receive written notice of changes in the terms (e.g., an increase in the interest rate) applicable to their accounts, and increase the amount of time these notices must be sent before the change becomes effective. The proposed changes include:

• Generally increasing advance notice before a changed term can be imposed from 15 to 45 days, to better allow consumers to obtain alternative financing or change their account usage.

• Requiring creditors to provide 45 days' prior notice before the creditor increases a rate due to the consumer's delinquency or default.

• When a change-in-terms notice accompanies a periodic statement, requiring a tabular disclosure on the front of the periodic statement of the key terms being changed.

Advertising provisions. The proposal would revise the rules governing advertising of open-end credit to help ensure consumers better understand the credit terms offered. These proposed revisions include:

• Requiring advertisements that state a minimum monthly payment on a plan offered to finance the purchase of goods or services to state, in equal prominence to the minimum payment, the time period required to pay the balance and the total of payments if only minimum payments are made.

• Permitting advertisements to refer to a rate as ''fixed'' only if the advertisement specifies a time period for which the rate is fixed and the rate will not increase for any reason during that time, or if a time period is not specified, if the rate will not increase for any reason while the plan is open.

III. The Board's Review of Open-End Credit Rules

A. December 2004 Advance Notice of Proposed Rulemaking

The Board began a review of Regulation Z in December 2004.[1] The Board initiated its review of Regulation Z by issuing an advance notice of proposed rulemaking (December 2004 ANPR). 69 FR 70925; December 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation. The December 2004 ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review. The comment period closed on March 28, 2005.

The Board received over 200 comment letters in response to the December 2004 ANPR. More than half of the comments were from individual consumers. About 60 comments were received from the industry or industry representatives, and about 20 comments were received from consumer advocates and community development groups. The Office of the Comptroller of the Currency, one state agency, and one member of Congress also submitted comments.

Scope. Commenters' views on a staged review of Regulation Z were divided. Some believe reviewing the regulation in stages makes the process manageable and focuses discussion and analysis. Others supported an independent focus on open-end credit rules because they believe open-end credit by its nature is distinct from other credit products covered by TILA and Regulation Z.

Some commenters supported the Board's approach generally, but voiced concern that looking at the regulation in a piecemeal fashion may lead to decisions in the early stages of the review that may need to be revisited later. If the review is staged, these commenters want all changes implemented at the same time, to ensure consistency between the open-end and closed-end rules.

Some commenters urged the Board to include open-end rules affecting home-equity lines of credit (HELOCs) in the initial stage of the review. If the Board chooses not to expand its review of open-end credit rules to cover home-secured credit, these commenters urged the Board to avoid making any revisions that would be inconsistent with existing HELOC requirements.

A few commenters concurred with the Board's approach of reviewing Regulation Z in stages, but they preferred that the Board start with rules of general applicability, such as definitions. These commenters generally urged the Board to provide additional clarity on the definition of ''finance charge,'' TILA's dollar cost of credit.

Finally, a few commenters stated the Board needs to review the entire regulation at the same time. They suggested a staged approach is not workable, and cited concerns about duplicating efforts, creating inconsistencies, and revisiting changes made in earlier stages of a lengthy review.

Format. In general, commenters representing both consumers and industry stated that the tabular format requirements for TILA's direct-mail credit card application and solicitation disclosures have proven useful to consumers, although a variety of suggestions were made to add or delete specific disclosures. Many, however, noted that typical account-opening disclosures are lengthy and complex, and suggested that the effectiveness of account-opening disclosures could be improved if key terms were summarized in a standardized format, perhaps in the same format as TILA's direct-mail credit card application and solicitation

[1] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

disclosures. These suggestions were consistent with the views of some members of the Board's Consumer Advisory Council. Industry commenters supported the Board's plan to use focus groups or other consumer research tools to test the effectiveness of any proposed revisions.

To combat ''information overload,'' many commenters asked the Board to emphasize only the most important information that consumers need at the time the disclosure is given. They asked the Board to avoid rules that require the repetitive delivery of complex information, not all of which is essential to comparison shopping, such as a lengthy explanation of the creditor's method of calculating balances now required at account opening and on periodic statements. Commenters suggested that the Board would most effectively promote comparison shopping by focusing on essential terms in a simplified way. They believe some information could also be provided to consumers through nonregulatory, educational methods. Taken together, these approaches could lead to simpler disclosures that consumers might be more inclined to read and understand.

Content. In general, commenters provided a variety of views on how to simplify TILA's cost disclosures. For example, some suggested that creditors should disclose only interest as the ''finance charge'' and simply identify all other fees and charges. Others suggested all fees associated with an open-end plan should be disclosed as the ''finance charge.'' Creditors sought, above all, clear rules.

Comments were divided on the usefulness of open-end APRs. TILA requires creditors to disclose an ''interest rate'' APR for shopping disclosures (such as in advertisements and solicitations) and at account opening, and an ''effective'' APR on periodic statements that reflects interest *and* fees, such as transaction charges assessed during the billing period. In general, consumer groups suggested that the Board mandate for shopping disclosures an ''average'' or ''typical'' effective APR based on an historical average cost to consumers with similar accounts. An average APR, consumer representatives stated, would give consumers a more accurate picture of what consumers' actual cost might be. Regarding the effective APR on periodic statements, consumer advocates stated that it is a key disclosure that is helpful, and can provide ''shock value'' to consumers when fees cause the APR to spike for the billing cycle. Commenters representing industry argued that an effective APR is not meaningful, confuses consumers, and is difficult to explain. Some commenters suggested that a disclosure on the periodic statement that provides context by explaining what costs are included in the effective APR might improve its usefulness.

Regarding advance notice of changes to rates and fees, comments were sharply divided. Creditors generally believe the current notice requirements are adequate, although for rate (and other) changes not involving a consumer's default, a number of creditors supported increasing the advance notice requirement from 15 to 30 days. Consumers and consumer representatives generally believe that when terms change, consumers should have the right under TILA to opt out of the new terms, or be allowed a much longer time period to find alternative credit products. They suggested a two-billing cycle advance notice or as long as 90 days. More fundamentally, these commenters believe card issuers should be held to the initial terms of the credit contract, at least until the credit card expires.

Where triggering events are set forth in the account agreement such as events that might trigger penalty pricing, creditors believe there is no need to provide additional notice when the event occurs; they are not changing a term, they stated, but merely implementing the agreement. Some suggest that instead of providing a notice when penalty pricing is triggered, penalty pricing and the triggers should be better emphasized in the application and account-opening disclosures. Consumers and consumer representatives agree that creditors' policies about when terms may change should be more prominently displayed, including in the credit card application disclosures. They further believe the Board should provide new substantive protections to consumers, such as prohibiting the practice of increasing rates merely because the consumer paid late on another credit account.

B. The Bankruptcy Act's Amendments to TILA and October 2005 Advance Notice of Proposed Rulemaking

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the ''Bankruptcy Act'') primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. Public Law 109–8, 119 Stat. 23. The Bankruptcy Act's TILA amendments principally deal with open-end credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements.

In October 2005, the Board published a second ANPR to solicit comment on implementing the Bankruptcy Act amendments (October 2005 ANPR). 70 FR 60235; October 17, 2005. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules. The comment period for the October 2005 ANPR closed on December 16, 2005.

The Board received approximately 50 comment letters in response to the October 2005 ANPR. Forty-five letters were submitted by financial institutions and their trade groups. Five letters were submitted by consumer groups.

Minimum payment warnings. Under the Bankruptcy Act, creditors that offer open-end accounts must provide standardized disclosures on each periodic statement about the effects of making only minimum payments, including an example of how long it would take to pay off a specified balance, along with a toll-free telephone number that consumers can use to obtain an estimate of how long it will take to pay off their own balance if only minimum payments are made. The Board must develop a table that creditors can use in responding to consumers requesting such estimates.

Industry commenters generally favored limiting the minimum payment disclosure to credit card accounts (thus, excluding HELOCs and overdraft lines of credit) and to those consumers who regularly make only minimum payments. Consumer groups generally favored broadly applying the rule to all types of open-end credit and to all open-end accountholders.

Industry commenters supported having an option to provide customized information (reflecting a consumer's actual account status) on the periodic statement or in response to a consumer's telephone call, but also wanted the option to use a standardized formula developed by the Board. Consumer group commenters asked the Board to require creditors to provide more customized estimates of payoff periods through the toll-free telephone number and to not allow creditors to use a standardized formula, and supported disclosure of an ''actual'' repayment time on the periodic statement.

Late-payment fees. Under the Bankruptcy Act, creditors offering open-end accounts must disclose on each periodic statement the earliest date on which a late payment fee may be charged, as well as the amount of the fee.

Industry commenters urged the Board to base the disclosure requirement on the contractual payment due date and to disregard any ''courtesy'' period that creditors informally recognize following the contractual payment due date. Although the industry provided mixed comments on any format requirements, most opposed a proximity requirement for disclosing the amount of the fee and the date. Comments were mixed on adding information about penalty APRs and ''cut-off times'' to the late payment disclosures. While supporters (a mix of industry and consumer commenters) believe the additional information is useful, others were concerned about the complexity of such a disclosure, and opposed the approach for that reason. Consumer commenters suggested substantive protections to ensure consumers' payments are timely credited, such as considering the postmark date to be the date of receipt.

Internet solicitations. The Bankruptcy Act provides that credit card issuers offering cards on the Internet must include the same tabular summary of key terms that is currently required for applications or solicitations sent by direct mail.

Although the Bankruptcy Act refers only to solicitations (where no application is required), most commenters (both industry and consumer groups) agreed that Internet applications should be treated the same as solicitations. Many industry commenters stated that the Board's interim final rule on electronic disclosures, issued in 2001, would be appropriate to implement the Bankruptcy Act. Regarding accuracy standards, the majority of industry commenters addressing this issue indicated that issuers should be required to update Internet disclosures every 30 days, while consumer groups suggested that the disclosures should be updated in a ''timely fashion,'' with 30 days being too long in some instances.

Introductory rate offers. Under the Bankruptcy Act, credit card issuers offering discounted introductory rates must clearly and conspicuously disclose in marketing materials the expiration date of the offer, the rate that will apply after that date, and an explanation of how the introductory rate may be revoked (for example, if the consumer makes a late payment).

In general, industry commenters asked for flexibility in complying with the new requirements. Consumer groups supported stricter standards, such as requiring an equivalent typeface for the word ''introductory'' in immediate proximity to the temporary rate and requiring the expiration date and subsequent rate to appear either side-by-side with, or immediately under or above, the most prominent statement of the temporary rate.

Account termination. Under the Bankruptcy Act, creditors are prohibited from terminating an open-end account before its expiration date solely because the consumer has not incurred finance charges on the account. Creditors are permitted, however, to terminate an account for inactivity.

Regarding guidance on what should be considered an ''expiration date,'' several industry commenters suggested using card expiration dates as the account expiration date. Others cautioned against using such an approach, because *accounts* do not terminate upon a card expiration date. Regarding what constitutes ''inactivity,'' many industry commenters stated no further guidance is necessary. Among those suggesting additional guidance, most suggested ''activity'' should be measured only by consumers' actions (charges and payments) as opposed to card issuer activity (for example, refunding fees, billing inactivity fees, or waiving unpaid balances).

High loan-to-value mortgage credit. For home-secured credit that may exceed the dwelling's fair-market value, the Bankruptcy Act amendments require creditors to provide additional disclosures at the time of application and in advertisements (for both open-end and closed-end credit). The disclosures would warn consumers that interest on the portion of the loan that exceeds the home's fair-market value is not tax deductible and encourage consumers to consult a tax advisor. Because these amendments deal with home-secured credit, the Board is not proposing revisions to Regulation Z to implement these provisions at this time. The Board anticipates implementing these provisions in connection with the upcoming review of Regulation Z's rules for mortgage transactions. Nevertheless, the following is a summary of the comments received.

In general, creditors asked for flexibility in providing the disclosure, either by permitting the notice to be provided to all mortgage applicants, or to be provided later in the approval process after creditors have determined the disclosure is triggered. Similarly, a number of industry commenters advocated limiting the advertising rule to creditors that specifically market high loan-to-value mortgage loans. Creditor commenters asked for guidance on loan-to-value calculations and safe harbors for how creditors determine property values. Consumer advocates favored triggering the disclosure when the possibility of negative amortization could occur.

C. Consumer Testing

A principal goal for the Regulation Z review is to produce revised and improved credit card disclosures that consumers will be more likely to pay attention to, understand, and use in their decisions, while at the same time not creating undue burdens for creditors. In April 2006, the Board retained a research and consulting firm (Macro International) that specializes in designing and testing documents to conduct consumer testing to help the Board review Regulation Z's credit card rules. Specifically, the Board used consumer testing to develop proposed model forms for the following credit card disclosures required by Regulation Z:

- Summary table disclosures provided in direct-mail solicitations and applications;
- Disclosures provided at account opening;
- Periodic statement disclosures; and
- Subsequent disclosures, such as notices provided when key account terms are changed, and notices on checks provided to access credit card accounts.

Working closely with the Board, Macro International conducted several tests. Each round of testing was conducted in a different city, throughout the United States. In addition, the consumer testing groups contained participants with a range of ethnicities, ages, educational levels, credit card behavior, and whether a consumer likely has a prime or subprime credit card.

Exploratory focus groups. In May and June 2006, the Board worked with Macro International to conduct two sets of focus groups with credit card consumers, in part, to learn more about what information consumers currently use in making decisions about their credit card accounts. Each focus group consisted of between eight and thirteen people that discussed issues identified by the Board and raised by a moderator from Macro International. Through these focus groups, the Board gathered information on what credit terms consumers usually consider when shopping for a credit card, what information they find useful when they receive a new credit card in the mail, and what information they find useful on periodic statements.

Cognitive interviews on existing disclosures. In August 2006, the Board worked with Macro International to conduct nine cognitive interviews with credit card customers. These cognitive interviews consisted of one-on-one discussions with consumers, during which consumers were asked to view existing sample credit card disclosures. The goals of these interviews were: (1) To learn more about what information consumers read when they receive current credit card disclosures; (2) to research how easily consumers can find various pieces of information in these disclosures; and (3) to test consumers' understanding of certain credit card-related words and phrases.

1. *Initial design of disclosures for testing.* In the fall of 2006, the Board worked with Macro International to develop sample credit card disclosures to be used in the later rounds of testing, taking into account information learned through the focus groups and the cognitive interviews.

2. *Additional cognitive interviews and revisions to disclosures.* In late 2006 and early 2007, the Board worked with Macro International to conduct four rounds of cognitive interviews (between seven and nine participants per round), where consumers were asked to view new sample credit card disclosures developed by the Board and Macro International. The rounds of interviews were conducted sequentially to allow for revisions to the testing materials based on what was learned from the testing during each previous round.

Results of testing. Several of the model forms were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov.*

Testing participants generally read the summary table provided in direct-mail credit card solicitations and applications and ignored information presented outside of the table. Thus, the proposal requires that information about events that trigger penalty rates and about important fees (late-payment fees, over-the-credit-limit fees, balance transfer fees, and cash advance fees) be placed in the table. Currently, this information may be placed outside the table.

With respect to the account-opening disclosures, consumer testing indicates that consumers commonly do not review their account agreements, which are often in small print and dense prose. The proposal would require creditors to include a table summarizing the key terms applicable to the account, similar to the table required for credit card applications and solicitations. Setting apart the most important terms in this way will better ensure that consumers are apprised of those terms.

With respect to periodic statement disclosures, testing participants found it beneficial to have the different types of transactions grouped together by type. Thus, the proposal requires creditors to group transactions together by type, such as purchases, cash advances, and balance transfers. In addition, many consumers more easily noticed the number and amount of fees when the fees were itemized and grouped together with interest charges. Consumers also noticed fees and interest charges more readily when they were located near the disclosure of the transactions on the account. Thus, under the proposal, creditors would be required to group all fees together and describe them in a manner consistent with consumers' general understanding of costs (''interest charge'' or ''fee''), without regard to whether the fees would be considered ''finance charges,'' ''other charges'' or neither under the regulation.

With respect to change-in-terms notices, consumer testing indicates that much like the account-opening disclosures, consumers may not typically read such notices, because they are often in small print and dense prose. To enhance the effectiveness of change-in-terms notices, when a creditor is changing terms which were required to be disclosed in the summary table provided at account opening, the proposed rules would require the creditor to include a table summarizing any such changed terms. Creditors commonly provide notices about changes to terms or rates in the same envelope with periodic statements. Consumer testing indicates that consumers may not typically look at the notices if they are provided as separate inserts given with periodic statements. Thus, in such cases, a table summarizing the change would have to appear on the periodic statement directly above the transaction list, where consumers are more likely to notice the changes.

Additional testing after comment period. After receiving comments from the public on the proposal and the revised disclosure forms, the Board will work with Macro International to revise the model disclosures. Macro International then will conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension and the usability of the newly-developed disclosures relative to existing disclosures and formats.

D. Other Outreach and Research

The Board also solicited input from members of the Board's Consumer Advisory Council on various issues presented by the review of Regulation Z's open-end credit rules. During 2005 and 2006, for example, the Council discussed the feasibility and advisability of reviewing Regulation Z in stages, ways to improve the summary table provided on or with credit card applications and solicitations, issues related to TILA's substantive protections (including dispute resolution procedures), and issues related to the Bankruptcy Act amendments. In addition, the Board met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to this proposal. The Board also reviewed disclosures currently provided by creditors, consumer complaints received by the federal banking agencies, and surveys on credit card usage to help inform the proposal.[2]

E. Reviewing Regulation Z in Stages

Based on the comments received and upon its own analysis, the Board is proceeding with a review of Regulation Z in stages. This proposal largely contains revisions to rules affecting open-end plans other than HELOCs subject to § 226.5b. These open-end (not home-secured) plans are distinct from other TILA-covered products, and conducting a review in stages allows for a manageable process. Possible revisions to rules affecting HELOCs will be considered in the Board's review of home-secured credit, currently underway. To minimize compliance burden for creditors offering HELOCs as well as other open-end credit, many of the open-end rules would be reorganized to delineate clearly the requirements for HELOCs and other forms of open-end credit. Although this reorganization would increase the size of the regulation and commentary, the Board believes a clear delineation of rules for HELOCs and other forms of open-end credit pending the review of HELOC rules provides a clear compliance benefit to creditors. Creditors that generate a single periodic statement for all open-end products would be given the option to retain the existing periodic statement disclosure scheme for HELOCs, or to disclose information on periodic statements under the revised rules for other open-end plans.

F. Implementation Period

The Board contemplates providing creditors sufficient time to implement

[2] Surveys reviewed include: Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970-2000,* Federal Reserve Bulletin, (September 2000); Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance,* Federal Reserve Bulletin (April 2002).

any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

IV. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).
- Add or modify information required to be disclosed with credit and charge card applications or solicitations if the Board determines the action is necessary to carry out the purposes of, or prevent evasions of, the application and solicitation disclosure rules. 15 U.S.C. 1637(c)(5).
- Require disclosures in advertisements of open-end plans. 15 U.S.C. 1663.

In the course of developing the proposal, the Board has considered the information collected from comment letters submitted in response to its ANPRs, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this proposal is appropriate to effectuate the purposes of TILA, to prevent the circumvention or evasion of TILA, and to facilitate compliance with the act.

Also as explained in this notice, the Board believes that the specific exemptions proposed are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion, the Board considered (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. The rationales for these proposed exemptions are explained below.

V. Discussion of Major Proposed Revisions

The goal of the proposed revisions is to improve the effectiveness of the Regulation Z disclosures that must be provided to consumers for open-end accounts. A summary of the key account terms must accompany applications and solicitations for credit card accounts. For all open-end credit plans, creditors must disclose costs and terms at account opening, generally before the first transaction. Consumers must receive periodic statements of account activity, and creditors must provide notice before certain changes in the account terms may become effective.

To shop for and understand the cost of credit, consumers must be able to identify and understand the key terms of open-end accounts. But the terms and conditions affecting credit card account pricing can be complex. The proposed revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, with content and formats that are clear and conspicuous. The proposed revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among credit card issuers. Many of the changes are based on the consumer testing that was conducted in connection with the review of Regulation Z.

In considering the proposed revisions, the Board has also sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposed revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for open-end plans, and when those costs must be disclosed. More effective disclosures may also reduce customer confusion and misunderstanding, which may also ease creditors' costs relating to consumer complaints and inquiries.

A. Credit Card Applications and Solicitations

Under Regulation Z, credit and charge card issuers are required to provide information about key costs and terms with their applications and solicitations.[3] This information is abbreviated, to help consumers focus on only the most important terms and decide whether to apply for the credit card account. If consumers respond to the offer and are issued a credit card, creditors must provide more detailed disclosures at account opening, before the first transaction occurs.

The application and solicitation disclosures are considered among the most effective TILA disclosures principally because they must be presented in a standardized table with headings, content, and format substantially similar to the model forms published by the Board. In 2001, the Board revised Regulation Z to enhance the application and solicitation disclosures by adding rules and guidance concerning the minimum type size and requiring additional fee disclosures.

Penalty pricing. The proposal would make several revisions that seek to improve consumers' understanding of default or penalty pricing. Currently, credit card issuers must disclose inside the table the APR that will apply in the event of the consumer's ''default.'' Some creditors define a ''default'' as making one late payment or exceeding the credit limit once. The actions that may trigger the penalty APR are currently required to be disclosed outside the table.

Consumer testing indicated that many consumers did not notice the information about penalty pricing when it was disclosed outside the table. Under the proposal, card issuers would be required to include in the table the specific actions that trigger penalty APRs (such as a late payment), the rate that will apply, the balances to which the penalty rate will apply, and the circumstances under which the penalty rate will expire or, if true, the fact that the penalty rate could apply indefinitely. The regulation would require card issuers to use the term ''penalty APR'' because the testing demonstrated that some consumers are confused by the term ''default rate.''

Similarly, the proposal requires card issuers to disclose inside (rather than outside) the table the fees for paying late, exceeding a credit limit, or making a payment that is returned, along with

[3] Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this notice will refer simply to ''credit cards.''

a cross-reference to the penalty rate if, for example, paying late could also trigger the penalty rate. Cash advance fees and balance transfer fees would also be disclosed inside the table. This proposed change is also based on consumer testing results; fees disclosed outside the table were often not noticed. Requiring card issuers to disclose returned-payment fees would be a new disclosure.

Variable-rate information. Currently, applications and solicitations offering variable APRs must disclose inside the table the index or formula used to make adjustments and the amount of any margin that is added. Additional details, such as how often the rate may change, must be disclosed outside the table. Under the proposal, information about variable APRs would be reduced to a single phrase indicating the APR varies ''with the market,'' along with a reference to the type of index, such as ''Prime.'' Consumer testing indicated that few consumers use the variable-rate information when shopping for a card. Moreover, participants were distracted or confused by details about margin values, how often the rate may change, and where an index can be found.

Payment allocation. The proposal would add a new disclosure to the table about the effect on credit costs of creditors' payment allocation methods when payments are applied entirely to transferred balances at low introductory APRs. If, as is common, a creditor allocates payments to low-rate balances first, consumers who make purchases on the account will not be able to take advantage of any ''grace period'' on purchases, without paying off the entire balance, including the low-rate balance transfer. Consumer testing indicated that consumers are often confused about this aspect of balance transfer offers. The new disclosure would alert consumers that they will pay interest on their purchases until the transferred balance is paid in full.

Web site reference. The proposal would also require card issuers to include a reference to the Board's Web site, where additional information is available about how to compare credit cards and what factors to consider. This responds to commenters who suggested that the Board consider nonregulatory approaches to provide opportunities for consumers to learn about credit products.

Subprime accounts. The proposal also addresses a concern that has been raised about subprime credit cards, which are generally offered to consumers with low credit scores or credit problems. Subprime credit cards often have substantial fees associated with opening the account. Typically, fees for the issuance or availability of credit are billed to consumers on the first periodic statement, and can substantially reduce the amount of credit available to the consumer. For example, the initial fees on an account with a $250 credit limit may reduce the available credit to less than $100. Consumer complaints received by the federal banking agencies state that consumers were unaware when they applied for cards of how little credit would be available after all the fees were assessed at account opening.

To address this concern, the proposal would require additional disclosures if the card issuer requires fees or a security deposit to issue the card that are 25 percent or more of the minimum credit limit offered for the account. In such cases, the card issuer would be required to include an example in the table of the amount of available credit the consumer would have after paying the fees or security deposit, assuming the consumer receives the minimum credit limit.

Balance computation methods. TILA requires creditors to identify their balance computation method by name, and Regulation Z requires that the disclosure be inside the table. However, consumer testing suggests that these names, such as the ''two-cycle average daily balance method,'' hold little meaning for consumers, and that consumers do not consider such information when shopping for accounts. Accordingly, the proposed rule requires creditors to place the name of the balance computation method outside the table, so that the disclosure does not detract from information that is more important to consumers.

B. Account-Opening Disclosures

Regulation Z requires creditors to disclose costs and terms before the first transaction is made on the account. The disclosures must specify the circumstances under which a ''finance charge'' may be imposed and how it will be determined. A ''finance charge'' is any charge that may be imposed as a condition of or an incident to the extension of credit, and includes, for example, interest, transaction charges, and minimum charges. The finance charge disclosures include a disclosure of each periodic rate of interest that may be applied to an outstanding balance (e.g., purchases, cash advances) as well as the corresponding annual percentage rate (APR). Creditors must also explain any grace period for making a payment without incurring a finance charge. They must also disclose the amount of any charge other than a finance charge that may be imposed as part of the credit plan (''other charges''), such as a late-payment charge. Consumers'' rights and responsibilities in the case of unauthorized use or billing disputes must also be explained. Currently, there are few format requirements for these account-opening disclosures, which are typically interspersed among other contractual terms in the creditor's account agreement.

Account-opening summary table. Account-opening disclosures have often been criticized because the key terms TILA requires to be disclosed are often interspersed within the credit agreements, and such agreements are long and complex. The proposal to require creditors to include a table summarizing the key terms addresses that concern by making the information more conspicuous. Creditors may continue, however, to provide other account-opening disclosures, aside from the fees and terms specified in the table, with other terms in their account agreements.

The new table provided at account opening would be substantially similar to the table provided with direct-mail credit card applications and solicitations. Consumer testing and surveys indicate that consumers generally are aware of the table on applications and solicitations. Consumer testing also indicates that consumers may not typically read their account agreements, which are often in small print and dense prose. Thus, setting apart the most important terms in a summary table will better ensure that consumers are aware of those terms.

The table required at account opening would include more information than the table required at application. For example, it would include a disclosure of any fee for transactions in a foreign currency or that take place in a foreign country. However, to reduce compliance burden for creditors that provide account-opening disclosures at application, the proposal would allow creditors to provide the more specific and inclusive account-opening table at application in lieu of the table otherwise required at application.

How charges are disclosed. Under the current rules, a creditor must disclose any ''finance charge'' or ''other charge'' in the written account-opening disclosures. A subsequent written notice is required if one of the fees disclosed at account opening increases or if certain fees are newly introduced during the life of the plan. The terms ''finance charge'' and ''other charge'' are given broad and flexible meanings in the regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. As creditors develop new kinds of services, some find it difficult to determine if associated charges for the new services meet the standard for a ''finance charge'' or ''other charge'' or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. Creditors are subject to civil liability and administrative enforcement for underdisclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, overdisclosure of rates and finance charges is not permitted by Regulation Z for open-end credit.

The fee disclosure rules also have been criticized as being outdated. These rules require creditors to provide fee disclosures at account opening, which may be months, and possibly years, before a particular disclosure is relevant to the consumer, such as when the consumer calls the creditor to request a service for which a fee is imposed. In addition, an account-related transaction may occur by telephone, when a written disclosure is not feasible.

The proposed rule is intended to respond to these criticisms while still giving full effect to TILA's requirement to disclose credit charges before they are imposed. Accordingly, under the proposal, the rules would be revised to (1) specify precisely the charges that creditors must disclose in writing at account opening (interest, minimum charges, transaction fees, annual fees, and penalty fees such as for paying late), which would be listed in the summary table, and; (2) permit creditors to disclose other less critical charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge. Although the proposal would permit creditors to disclose certain costs orally for purposes of TILA, the Board anticipates that creditors will continue to identify fees in the account agreement for contract or other reasons.

Under the proposal, some charges would be covered by TILA that the current regulation, as interpreted by the staff commentary, excludes from TILA coverage, such as fees for expedited payment and expedited delivery. It may not have been useful to consumers to cover such charges under TILA when such coverage would have meant only that the charges were disclosed long before they became relevant to the consumer. The Board believes it would be useful to consumers to cover such charges under TILA as part of a rule that permits their disclosure at a relevant time. Further, as new services (and associated charges) are developed, the proposal minimizes risk of civil liability associated with the determination as to whether a fee is a finance charge or an other charge, or is not covered by TILA at all.

C. Periodic Statements

Creditors are required to provide periodic statements reflecting the account activity for the billing cycle (typically, about one month). In addition to identifying each transaction on the account, creditors must identify each ''finance charge'' using that term, and each ''other charge'' assessed against the account during the statement period. When a periodic interest rate is applied to an outstanding balance to compute the finance charge, creditors must disclose the periodic rate and its corresponding APR. Creditors must also disclose an ''effective'' or ''historical'' APR for the billing cycle, which, unlike the corresponding APR, includes not just interest but also finance charges imposed in the form of fees (such as cash advance fees or balance transfer fees). Periodic statements must also state the time period a consumer has to pay an outstanding balance to avoid additional finance charges (the ''grace period''), if applicable.

Fees and interest costs. The proposal contains a number of revisions to the periodic statement to improve consumers' understanding of fees and interest costs. Currently, creditors must identify on periodic statements any ''finance charges'' that have been added to the account during the billing cycle, and creditors typically list these charges with other transactions, such as purchases, chronologically on the statement. The finance charges must be itemized by type. Thus, interest charges might be described as ''finance charges due to periodic rates.'' Charges such as late payment fees, which are not ''finance charges,'' are typically disclosed individually and are interspersed among other transactions.

Consumer testing indicated that consumers generally understand that ''interest'' is the cost that results from applying a rate to a balance over time and distinguish ''interest'' from other fees, such as a cash advance fee or a late payment fee. Consumer testing also indicated that many consumers more easily determine the number and amount of fees when the fees are itemized and grouped together.

Thus, under the proposal, creditors would be required to group all charges together and describe them in a manner consistent with consumers' general understanding of costs (''interest charge'' or ''fee''), without regard to whether the charges would be considered ''finance charges,'' ''other charges,'' or neither. Interest charges would be identified by type (for example, interest on purchases or interest on balance transfers) as would fees (for example, cash advance fee or late-payment fee).

Consumer testing also indicated that many consumers more quickly and accurately determined the total dollar cost of credit for the billing cycle when a total dollar amount of fees for the cycle was disclosed. Thus, the proposal would require creditors to disclose the (1) total fees and (2) total interest imposed for the cycle. The proposal would also require disclosure of year-to-date totals for interest charges and fees. For many consumers, costs disclosed in dollars are more readily understood than costs disclosed as percentage rates. The year-to-date figures are intended to assist consumers in better understanding the overall cost of their credit account and would be an important disclosure and an effective aid in understanding annualized costs, especially if the Board were to eliminate the requirement to disclose the effective APR on periodic statements, as discussed below.

The effective APR. The ''effective'' APR disclosed on periodic statements reflects the cost of interest and certain other finance charges imposed during the statement period. For example, for a cash advance, the effective APR reflects both interest and any flat or proportional fee assessed for the advance.

For the reasons discussed below, the Board is proposing two alternative approaches to address the effective APR. The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its calculation. The second approach would eliminate the requirement to disclose the effective APR.

Creditors believe the effective APR should be eliminated. They believe consumers do not understand the effective APR, including how it differs from the corresponding (interest rate) APR, why it is often ''high,'' and which fees the effective APR reflects. Creditors say they find it difficult, if not impossible, to explain the effective APR to consumers who call them with questions or concerns. They note that callers sometimes believe, erroneously, that the effective APR signals a prospective increase in their interest rate, and they may make uninformed decisions as a result. And, creditors say, even if the consumer does understand the effective APR, the disclosure does not provide any more information than a disclosure of the total dollar costs for the billing cycle. Moreover, creditors say the effective APR is arbitrary and inherently inaccurate, principally because it amortizes the cost for credit over only one month (billing cycle) even though the consumer may take several months (or longer) to repay the debt.

Consumer groups acknowledge that the effective APR is not well understood, but argue that it nonetheless serves a useful purpose by showing the higher cost of some credit transactions. They contend the effective APR helps consumers decide each month whether to continue using the account, to shop for another credit product, or to use an alternative means of payment such as a debit card. Consumer groups also contend that reflecting costs, such as cash advance fees and balance transfer fees, in the effective APR creates a ''sticker shock'' and alerts consumers that the overall cost of a transaction for the cycle is high and exceeds the advertised corresponding APR. This shock, they say, may persuade some consumers not to use certain features on the account, such as cash advances, in the future. In their view, the utility of the effective APR would be maximized if it reflected all costs imposed during the cycle (rather than only some costs as is currently the case).

As part of the consumer testing, mock periodic statements were developed in an attempt to improve consumers' understanding of the effective APR. A written explanation and varying terminology were tested. In most rounds participants showed little understanding of the effective APR, but the form was adjusted between rounds as to terminology and format, and in the last round a number of participants showed more understanding of the effective APR.

Thus, the draft proposal includes a number of revisions to the presentation of the effective APR intended to help consumers understand the figure. In addition, the proposal seeks to improve consumer understanding and reduce creditor uncertainty by specifying more clearly which fees are to be included in the effective APR.[4] As mentioned, however, the Board is also seeking comment on an alternative proposal to eliminate the disclosure on the basis that it may not provide consumers a meaningful benefit.

Transactions. Currently, there are no format requirements for disclosing different types of transactions, such as purchases, cash advances, and balance transfers on periodic statements. Often, transactions are presented together in chronological order. Consumer testing indicated that participants found it helpful to have similar types of transactions grouped together on the statement. Consumers also found it helpful, within the broad grouping of fees and transactions, when transactions were segregated by type (*e.g.*, listing all purchases together, separate from cash advances or balance transfers). Further, consumers noticed fees and interest charges more readily when they were located near the transactions. For these reasons, the proposal requires creditors to: (1) Group similar transactions together by type, such as purchases, cash advances, and balance transfers, and (2) group fees and interest charges together, itemized by type, with the list of transactions.

Late payments. Currently, creditors must disclose the date by which consumers must pay a balance to avoid finance charges. Creditors must also disclose any cut-off time for receiving payments on the payment due date; this is usually disclosed on the reverse side of periodic statements. The Bankruptcy Act amendments expressly require creditors to disclose the payment due date (or if different, the date after which a late-payment fee may be imposed) along with the amount of the late-payment fee.

Under the proposal, creditors would be required to disclose the payment due date on the front side of the periodic statement and, closely proximate to the date, any cut-off time if it is before 5 p.m. Consumer testing indicates that many consumers believe cut-off times are the close of the business day and more readily notice the cut-off time when it is located near the due date.

Creditors would also be required to disclose, in close proximity to the due date, the amount of the late-payment fee and the penalty APR that could be triggered by a late payment. Applying the penalty APR to outstanding balances can significantly increase costs. Thus, it is important for consumers to be alerted to the consequence of paying late.

Minimum payments. The Bankruptcy Act requires creditors offering open-end plans to provide a warning about the effects of making only minimum payments. The proposal would implement this requirement solely for credit card issuers. Under the proposal, card issuers must provide (1) a ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay a specified balance in full if only minimum payments are made; and (3) a toll-free telephone number that consumers may call to obtain an estimate of the time it would take to repay their actual account balance using minimum payments. Most card issuers must establish and maintain their own toll-free telephone numbers to provide the repayment estimates. However, the Board is required to establish and maintain, for two years, a toll-free telephone number for creditors that are depository institutions having assets of $250 million or less. This number is for the customers of those institutions to call to get answers to questions about how long it will take to pay their account in full making only the minimum payment. The Federal Trade Commission (FTC) must maintain a similar toll-free telephone number for use by customers of creditors that are not depository institutions. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act amendments direct the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made (''generic repayment estimate'').

Pursuant to the Bankruptcy Act amendments, the proposal also allows a card issuer to establish a toll-free telephone number to provide customers with the actual number of months that it will take consumers to repay their outstanding balance (''actual repayment disclosure'') instead of providing an estimate based on the Board-created table. A card issuer that does so need not include a hypothetical example on its periodic statements, but must disclose the warning statement and the toll-free telephone number.

The proposal also allows card issuers to provide the actual repayment disclosure on their periodic statements. Card issuers would be encouraged to use this approach. Participants in consumer testing who typically carry

[4] The proposal also would reverse a staff commentary provision that excludes ATM fees from the finance charge and effective APR; and it would address for the first time foreign transaction fees, which it would clarify are to be included in the finance charge and effective APR.

credit card balances (revolvers) found an estimated repayment period based on terms that apply to their own account more useful than a hypothetical example. To encourage card issuers to provide the actual repayment disclosure on their periodic statements, the proposal provides that if card issuers do so, they need not disclose the warning, the hypothetical example and a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure.

As described above, the Bankruptcy Act also requires the Board to develop a ''table'' that creditors, the Board and the FTC must use to create generic repayment estimates. Instead of creating a table, the proposal contains guidance for how to calculate generic repayment estimates. Consumers that call the toll-free telephone number could be prompted to input information about their outstanding balance and the APR applicable to their account. Although issuers have the ability to program their systems to obtain consumers' account information from their account management systems, for the reasons discussed in the section-by-section analysis to Appendix M–1, the proposal does not require issuers to do so.

D. Changes in Consumer's Interest Rate and Other Account Terms

Regulation Z requires creditors to provide advance written notice of some changes to the terms of an open-end plan. The proposal includes several revisions to Regulation Z's requirements for notifying consumers about such changes.

Currently, Regulation Z requires creditors to send, in most cases, notices 15 days before the effective date of certain changes in the account terms. However, creditors need not inform consumers in advance if the rate applicable to their account increases due to default or delinquency. Thus, consumers may not realize until they receive their monthly statement for a billing cycle that their late payment triggered application of the higher penalty rate, effective the first day of the month's statement.

Timing. Currently, Regulation Z generally requires creditors to mail a change-in-terms notice 15 days before a change takes effect. Consumer groups and others have criticized the 15-day period as providing too little time after the notice is sent for the consumer to receive the notice, shop for alternative credit and possibly pay off the existing credit card account. Under the proposal, notice must be sent at least 45 days before the effective date of the change, which would give consumers about a month to pursue their options.

Penalty rates. Currently, creditors must inform consumers about rates that are increased due to default or delinquency, but not in advance of implementation of the increase. Contractual thresholds for default are sometimes very low, and penalty pricing commonly applies to all existing balances, including low-rate promotional balances. An event triggering the default may occur a year or more after the account is opened. For example, a consumer may open an account, and a year or more later may take advantage of a low promotional rate to transfer balances from another account. That consumer reasonably may not recall reading in the account-opening disclosure that a single transaction exceeding the credit limit could cause the interest rates on existing balances, including on the promotional transfer, to increase. Thus, the proposal would expand the events triggering advance notice to include increases triggered by default or delinquency. Advance notice of a potentially significant increase in the cost of credit is intended to allow consumers to consider alternatives before the increase is imposed, such as making other financial arrangements or choosing not to engage in additional transactions that will increase the balances on their account. Comment is solicited on whether a shorter time period than 45 days' advance notice would be adequate. Actions creditors may engage in to mitigate risk, such as by lowering credit limits or suspending credit privileges, are not affected by the proposal.

Format. Currently, there are few format requirements for change-in-terms disclosures. As with account-opening disclosures, creditors commonly intersperse change-in-terms notices with other amendments to the account agreement, and both are provided in pamphlets in small print and dense prose. Consumer testing indicates many consumers set aside and do not read densely-worded pamphlets.

Under the proposal, creditors may continue to notify consumers about changes to terms required to be disclosed by Regulation Z, along with other changes to the account agreement. However, if a changed term is one that must be provided in the account-opening summary table, creditors must provide that change in a summary table to enhance the effectiveness of the change-in-terms notice.

Creditors commonly enclose notices about changes to terms or rates with periodic statements. Under the proposal, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces that a penalty rate will be imposed on the account, a table summarizing the impending change must appear on the periodic statement. The table would have to appear directly above the transaction list, in light of testing that shows many consumers tend to focus on the list of transactions. Consumers who participated in testing set aside change-in-terms pamphlets that accompanied periodic statements. Participants uniformly looked at the front side of periodic statements and reviewed at least the transactions.

E. Advertisements

Advertising minimum payments. Consumers commonly are offered the option to finance the purchase of goods or services (such as appliances or furniture) by establishing an open-end credit plan. The monthly minimum payments associated with the purchase are often advertised as part of the offer. Under current rules, advertisements for open-end credit plans are not required to include information about the time it will take to pay for a purchase or the total cost if only minimum payments are made; if the transaction were a closed-end installment loan, the number of payments and the total cost would be disclosed. Under the proposal, advertisements stating a minimum monthly payment for an open-end credit plan that would be established to finance the purchase of goods or services must state, in equal prominence to the minimum payment, the time period required to pay the balance and the total of payments if only minimum payments are made.

Advertising ''fixed'' rates. Creditors sometimes advertise the APR for open-end accounts as a ''fixed'' rate even though the creditor reserves the right to change the rate at any time for any reason. Consumer testing indicated that many consumers believe that a ''fixed rate'' will not change, and do not understand that creditors may use the term ''fixed'' as a shorthand reference for rates that do not vary based on changes in an index or formula. Under the proposal, an advertisement may refer to a rate as ''fixed'' if the advertisement specifies a time period the rate will be fixed and the rate will not increase during that period. If a time period is not specified, the advertisement may refer to a rate as ''fixed'' only if the rate will not increase while the plan is open.

F. Other Disclosures and Protections

"Open-end" plans comprised of closed-end features. Some creditors give open-end credit disclosures on credit plans that include closed-end features, that is, separate loans with fixed repayment periods. These creditors treat these loans as advances on a revolving credit line for purposes of Regulation Z even though the consumer's credit information is separately evaluated and he or she may have to complete a separate application for each "advance," and the consumer's payments on the "advance" do not replenish the "line." Provisions in the commentary lend support to this approach. The proposal would revise these provisions to indicate closed-end disclosures rather than open-end disclosures are appropriate when the credit being extended is individual loans that are individually approved and underwritten.

Checks that access a credit card account. Many credit card issuers provide accountholders with checks that can be used to obtain cash, pay the outstanding balance on another account, or purchase goods and services directly from merchants. The solicitation letter accompanying the checks may offer a low introductory APR for transactions that use the checks. The proposed revisions would require the checks mailed by card issuers to be accompanied by cost disclosures.

Currently, creditors need not disclose costs associated with using the checks if the finance charges that would apply (that is, the interest rate and transaction fees) have been previously disclosed, such as in the account agreement. If the check is sent 30 days or more after the account is opened, creditors must refer consumers to their account agreements for more information about how the rate and fees are determined.

Consumers may receive these checks throughout the life of the credit card account. Thus, significant time may elapse between the time account-opening disclosures are provided and the time a consumer considers using the check. In addition, consumer testing indicates that consumers may not notice references to other documents such as the account-opening disclosures or periodic statements for rate information because they tend to look for percentages and dollar figures when looking for the costs of using the checks. Under the proposed revisions, checks that can access credit card accounts must be accompanied by information about the rates and fees that will apply if the checks are used, and about whether a grace period exists. To ensure the disclosures are conspicuous, creditors would be required to provide the information in a table, on the front side of the page containing the checks.

Credit insurance, debt cancellation, and debt suspension coverage. Under Regulation Z, premiums for credit life, accident, health, or loss-of-income insurance are considered finance charges if the insurance is written in connection with a credit transaction. However, these costs may be excluded from the finance charge and APR (for both open-end and closed-end credit transactions), if creditors disclose the cost and the fact that the coverage is not required to obtain credit, and the consumer signs or initials an affirmative written request for the insurance. Since 1996, the same rules have applied to creditors' "debt cancellation" agreements, in which a creditor agrees to cancel the debt, or part of it, on the occurrence of specified events.

Under the proposal, the existing rules for debt cancellation coverage would also be applied to "debt suspension" coverage (for both open-end credit and closed-end transactions). "Debt suspension" products are related to, but different from, debt cancellation. Debt suspension products merely defer consumers' obligation to make the minimum payment for some period after the occurrence of a specified event. During the suspension period, interest may continue to accrue, or it may be suspended as well. Under the proposal, to exclude the cost of debt suspension coverage from the finance charge and APR, creditors must inform consumers that the coverage suspends, but does not cancel, the debt.

Under the current rules, charges for credit insurance and debt cancellation coverage are deemed not to be finance charges if a consumer requests coverage after an open-end credit account is opened or after a closed-end credit transaction is consummated (the coverage is deemed not to be "written in connection" with the credit transaction). Because in such cases the charges are defined as non-finance charges, Regulation Z does not require a disclosure or written evidence of consent to exclude them from the finance charge. The proposed revisions to Regulation Z would implement a broader interpretation of "written in connection" with a credit transaction and require creditors to provide disclosures, and obtain evidence of consent, on sales of credit insurance or debt cancellation or suspension coverage during the life of an open-end account. If a consumer requests the coverage by telephone, creditors may provide the disclosures orally, but in that case they must mail written disclosures within three days of the call.[5]

VI. Section-by-Section Analysis

In reviewing the rules affecting open-end credit, the Board has reorganized some provisions to make the regulation easier to use. Rules affecting home-equity lines of credit (HELOCs) subject to § 226.5b are separately delineated in § 226.6 (account-opening disclosures), § 226.7 (periodic statements), and § 226.9 (subsequent disclosures) Footnotes have been moved to the text of the regulation or commentary, as appropriate. These proposed revisions are identified in a table below.

See IX. Redesignation Table.

Introduction

The official staff commentary to Regulation Z begins with an Introduction. Comment I–6 discusses reference materials published at the end of each section of the commentary adopted in 1981. 46 FR 50,288; October 9, 1981. The references were intended as a compliance aid during the transition to the 1981 revisions to Regulation Z. The Board would delete these references and comment I–6, as obsolete. Comment I–3, I–4(b), and I–7, which address 1981 rules of transition, also would be deleted as obsolete.

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(c) generally outlines the persons and transactions covered by Regulation Z. Comment 1(c)–1 provides, in part, that the regulation applies to consumer credit extended to residents (including resident aliens) of a state. Technical revisions are proposed for clarity. Comment is requested if further guidance on the scope of coverage would be helpful.

Section 226.1(d)(2), which summarizes the organization of the regulation's open-end credit rules (Subpart B), would be amended to reinsert text inadvertently deleted in a previous rulemaking. *See* 54 FR 24670; June 9, 1989. Section 226.1(d)(4), which summarizes miscellaneous provisions in the regulation (Subpart D), would be updated to describe amendments made in 2001 to Subpart D relating to

[5] The proposed revisions to Regulation Z requiring disclosures to be mailed within three days of a telephone request for these products are consistent with the rules of the federal banking agencies governing insured depository institutions' sales of insurance and with guidance published by the Office of the Comptroller of the Currency (OCC) concerning national banks' sales of debt cancellation and debt suspension products.

disclosures made in languages other than English. *See* 66 FR 17339; March 30, 2001. The substance of Footnote 1 would be deleted as unnecessary.

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

For clarity, the Board proposes technical revisions to the commentary to § 226.2(a)(2), with no intended change in substance or meaning. No changes are proposed for the text of § 226.2(a)(2).

2(a)(4) Billing Cycle

TILA Section 127(b) provides that, for an open-end credit plan, the creditor shall send the consumer a periodic statement for each billing cycle at the end of which there is an outstanding balance or with respect to which a finance charge is imposed. 15 U.S.C. 1637(b). ''Billing cycle'' is not defined in the statute, but is defined in § 226.2(a)(4) of Regulation Z as ''the interval between the days or dates of regular periodic statements.'' In addition, § 226.2(a)(4) requires that billing cycles be equal and no longer than a quarter of a year, and allows a variance of up to four days from the regular day or date of the statement. Comment 2(a)(4)–3 provides an exception to the requirement for equal cycles: the ''transitional billing cycle that can occur when the creditor occasionally changes its billing cycles so as to establish a new statement day or date.'' Under the proposal, the Board would clarify that creditors may also vary the length of the first cycle on an open-end account in certain situations.

Questions have sometimes arisen about the first cycle that occurs when a consumer opens an open-end credit account, and specifically, about whether the first cycle may vary by more than four days from the regular cycle interval without violating the equal-cycle requirement. For example, in order to establish the consumer's account on the creditor's billing system, the first cycle may need to be longer or shorter than a monthly period by more than four days, depending upon the date the account is opened. The Board believes that such a variance for a first cycle, within reason, would not harm consumers and would facilitate compliance. Comment 2(a)(4)–3 would be revised to clarify this point.

2(a)(15) Credit Card

TILA defines ''credit card'' as ''any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' TILA Section 103(k); 15 U.S.C. 1602(k). In addition, Regulation Z provides that a credit card is a ''single credit device that may be usable *from time to time* to obtain credit.'' *See* § 226.2(a)(15). The definition of ''credit card'' in the regulation would remain largely unchanged; however, the current reference to a ''coupon book'' in the definition would be deleted as obsolete.

Checks that access credit card accounts. Credit card issuers sometimes provide cardholders with checks that access a credit card account, which can be used to obtain cash, purchase goods or services, or pay the outstanding balance on another account. These checks are often mailed to consumers unsolicited, sometimes with consumers' monthly statements. When a consumer uses such a check, the amount of the check will be billed to the cardholder's account.

Historically, checks that access credit card accounts have not been treated as ''credit cards'' under TILA because each check can be used only once and not ''from time to time.'' *See* comment 2(a)(15)–1. As a result, TILA's protections involving merchant disputes, unauthorized use of the account, and the prohibition against unsolicited issuance, which apply only to ''credit cards,'' do not apply to these checks. *See* § 226.12. However, other protections do apply to such checks. *See* § 226.13. In the December 2004 ANPR, the Board solicited comment as to whether it should extend TILA's protections for credit cards to other extensions on credit card accounts, in particular checks that access credit card accounts. Q45. The Board also asked whether the industry is developing open-end credit plans that would allow consumers to conduct transactions using only account numbers and that do not involve the issuance of physical devices traditionally considered to be credit cards. Q44.

In response to the December 2004 ANPR, several consumer commenters urged the Board to expand the definition of ''credit card'' to include checks that access a credit card account, in particular to address the risk of increased fraud and heightened identity theft stemming from the unrestricted issuance of such checks. Specifically, these commenters cited concerns that these checks could be sent to a consumer at any time without the consumer's request. Alternatively, some consumer commenters suggested that if these checks continued to be issued on an unsolicited basis, consumers should at least be able to opt out from receiving them. In addition, one consumer group commented that the Board could address non-physical credit cards by clarifying that the term ''device'' as it appears in the definition of ''credit card'' can include any physical object or a method or process.

Industry commenters opposed expanding the definition of ''credit card'' to cover checks that access credit card accounts, for various reasons. In general, industry commenters stated that they were aware of few complaints regarding such checks, and that in their experience, most consumers find the checks useful and convenient, as demonstrated by their frequent use. In addressing unsolicited issuance concerns specifically, industry commenters noted that upon a consumer's request, most issuers will discontinue sending checks that access a credit card account.

Industry commenters also stated that it was unnecessary to extend the unauthorized use protections to convenience checks because convenience check transactions are generally subject to the Uniform Commercial Code (UCC) provisions governing checks, and thus a consumer generally would not have any liability for a forged check, provided the consumer complies with certain timing requirements. Industry commenters also opposed applying the merchant dispute provisions (in § 226.12) to checks that access a credit card account, stating that these checks are not processed through the payment card associations' networks. Because card issuers may have no connection to or relationship with merchants that accept these checks, industry commenters stated that issuers do not have the ability to charge back to that merchant transactions conducted with these checks. Accordingly, industry commenters believed that the consumer was in the best position to contact the merchant in the event of a dispute involving a transaction using one of these checks.

In the proposal, the definition of ''credit card'' would remain unchanged. The Board believes it may be unnecessary to address unauthorized use concerns by treating checks that access credit card accounts as credit cards, to the extent existing law or agreements provide protections to these transactions. Moreover, under Regulation Z, a consumer is currently able to assert billing error claims for transactions involving checks that access a credit card account because the billing error provisions in § 226.13 apply to any extension of credit under an open-end plan, and are not limited to credit cards. The Board also does not believe that it is necessary to require issuers to provide consumers with the ability to opt out of receiving checks that access credit card accounts. The Board understands that in many instances, issuers will honor consumer requests to opt out of receiving such checks, and the Board encourages creditors to continue the practice. In addition, as noted above, consumers would be able to assert a billing error claim with respect to any unauthorized transactions involving such checks and is not liable for unauthorized transactions, as provided for under § 226.13.

Plans in which no physical device is issued. The proposal does not address circumstances where a consumer may conduct a transaction on an open-end plan that does not have a physical device. The Board had solicited comment on such plans because it has received anecdotal information about limited cases in which consumers obtained credit by providing an account number (for example, to obtain food and services at a resort) and where a physical device was not issued to the consumer. Industry commenters stated that, in general, they were unaware of any plans to provide open-end accounts that did not involve the issuance of a card or other physical device. In particular, industry commenters noted that creditors will continue to issue physical devices because transactions where a card or other physical device is present are generally far more secure and less likely to involve fraud compared to those in which only the account number, along with other information, is used to verify the identity of the user. Moreover, industry commenters noted that consumers still need a tangible device bearing account information that they can easily carry with them. As a result, industry commenters generally believed that issuers would be unlikely to abandon the issuance of a physical card or device.

The Board believes that it is not necessary at this time to address this issue, but it will continue to monitor developments in the marketplace. Of course, to the extent a creditor has issued a device that meets the definition of a ''credit card'' for an account, transactions on that account are subject to the provisions that apply to transactions involving the use of a ''credit card,'' even if the particular transaction itself is not conducted using the device (for example, in the case of phone or Internet transactions).

Coupon books. As noted above, the definition of ''credit card'' under both TILA and Regulation Z includes a reference to a ''coupon book.'' Neither the statute nor the regulation provides any guidance on the types of devices that would constitute a ''coupon book'' so as to qualify as a ''credit card'' under the definition. Comment 2(a)(15)–1, as discussed above, states that checks and similar instruments that can be used only once to obtain a single credit extension are not ''credit cards,'' and, logically such instruments, even if issued in a separate booklet or in conjunction with a periodic statement, also would not be considered to be coupon books. Thus, as the Board is not aware of devices existing today that would qualify as a coupon book under the statute and regulation, the Board is proposing to delete the reference to such devices in the definition of ''credit card'' as obsolete. Comment is requested as to whether removal of the reference to ''coupon book'' in § 226.2(a)(15) would help clarify the definition of ''credit card'' without inadvertently limiting the availability of Regulation Z protections.

Charge cards. Comment 2(a)(15)–3 discusses charge cards and identifies provisions in Regulation Z in which a charge card is distinguished from a credit card. As discussed in detail in the section-by-section analysis to § 226.7(b)(11) and § 226.7(b)(12), the new late payment and minimum payment disclosure requirements contained in the Bankruptcy Act do not apply to charge card issuers. Thus, comment 2(a)(15)–3 is updated to reflect those changes.

2(a)(17) Creditor

For reasons explained in the section-by-section analysis to § 226.3, the Board is proposing to exempt from TILA coverage credit extended under employee-sponsored retirement plans. Comment 2(a)(17)(i)–8, which provides guidance on whether such a plan is a creditor for purposes of TILA, would be deleted. The guidance would no longer be necessary because loans granted under such plans would be exempt from TILA and, as such, the definition of ''creditor'' would not need to be clarified.

In addition, the substance of footnote 3 would be moved to a new § 226.2(a)(17)(v), and references revised, accordingly. The dates used to illustrate numerical tests for determining whether a creditor ''regularly'' extends consumer credit are updated in comments 2(a)(17)–3 through –6.

2(a)(20) Open-End Credit

Under TILA Section 103(i), as implemented by § 226.2(a)(20) of Regulation Z, ''open-end credit'' is consumer credit extended by a creditor under a plan in which (1) the creditor reasonably contemplates repeated transactions, (2) the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and (3) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, generally is made available to the extent that any outstanding balance is repaid. Comment 2(a)(20)–1 reiterates that consumer credit must meet all three of these criteria to be open-end credit. Comment 2(a)(20)–5 currently states, with respect to replenishment of the credit line, that a creditor need not establish a specific credit limit for the line of credit and that the line need not always be replenished to its original amount.

''Spurious'' open-end credit. The Board has received comments from time to time from state attorneys general and consumer groups voicing concern that the definition of open-end credit permits creditors to treat as open-end plans certain credit transactions that would be more properly characterized as closed-end credit. These commenters note that as a practical matter, such ''spurious'' open-end credit is unlikely to be used for repeated transactions and the credit line does not replenish to the extent that the consumer pays down his or her balance. Furthermore, these open-end plans may be established primarily to finance an infrequently purchased product or service, the credit limits for many of the creditor's customers may be close to the cost of that product or service, and the creditor may have no reasonable grounds for expecting that there will be repeated transactions by many of its customers. When open-end disclosures are given for such products, the concern voiced by state attorneys general and consumer groups is that those disclosures fail to adequately disclose the period of time that it will take to repay the balance, the total of the payments that a consumer will be required to make (assuming in both cases that the consumer makes only the minimum required payments).

In an effort to address these concerns, in 1997 the Board proposed adding two sets of factors to the commentary, one set that creditors should consider when determining whether they ''reasonably contemplate repeated transactions,'' and another set to provide guidance on whether a credit line is ''reusable.'' [6]

[6] The factors that were proposed regarding the ''repeated transactions'' portion of the definition were: (1) Whether the product is something that consumers would most likely not purchase in multiples, (2) whether the line of credit is established for the purpose of purchasing a

The Board received many comments from industry in response to this proposal, most of which criticized the factors on the grounds that they would result in excluding from the definition of ''open-end credit'' legitimate open-end credit products. In particular, commenters were concerned about the status of private label credit cards that offer an incentive to the consumer to make a large initial purchase. In response to these concerns, the two sets of factors were not adopted in the final commentary revisions.

As discussed further in the section-by-section analysis to § 226.16, the Board proposes to address potential ''spurious'' open-end credit transactions through improved advertising disclosures. The Board believes this to be a more targeted and effective approach than revising the definition of open-end credit. One of the major problems with ''spurious'' open-end credit highlighted by commenters is that creditors advertise a low minimum monthly payment which can mislead consumers, who may not be aware of the total amount of payments they would be required to make, or the term over which they would be obligated to make those payments. As discussed below in the section-by-section analysis to § 226.16(b), the proposed rule would require a creditor that states a minimum monthly payment in an advertisement also to state the term that it will take to repay the debt at that minimum payment level, as well as the total amount of the payments. The proposed rule would require that disclosure of the term and total amount of payments be equally prominent to the advertisement of the minimum payment. The Board believes that disclosure of the term and total of payments in advertisements will help to improve consumer understanding about the cost of credit products for which a low monthly payment is advertised, addressing one of the major concerns regarding ''spurious'' open-end credit.

''Open-end'' plans comprised of closed-end features. The Board also is concerned that, under current guidance in the commentary, some credit products are treated as open-end plans, with open-end disclosures given to consumers, when such products would more appropriately be treated as closed-end transactions. Closed-end disclosures are more appropriate than open-end disclosures when the credit being extended is individual loans that are individually approved and underwritten. The Board is particularly concerned about certain credit plans, where each individual credit transaction is separately evaluated.

For example, under certain so-called multifeatured open-end plans, creditors may offer loans to be used for the purchase of an automobile. These automobile loan transactions are approved and underwritten separately from other credit made available on the plan. (In addition, the consumer typically has no right to borrow additional amounts on the automobile loan ''feature'' as the loan is repaid.) If the consumer repays the entire automobile loan, he or she may have no right to take further advances on that ''feature,'' and must separately reapply if he or she wishes to obtain another automobile loan, or use that aspect of the plan for similar purchases. Typically, while the consumer may be able to obtain additional advances under the plan as a whole, the creditor separately evaluates each request.

Currently, some creditors may be treating such plans as open-end credit, in light of several sections in the current commentary. Current comment 2(a)(20)–2 provides that if a program as a whole meets the definition of open-end credit, such a program may be considered a single multifeatured plan, notwithstanding the fact that certain features might be used infrequently. In addition, current comment 2(a)(20)–3 indicates that, for a multifeatured open-end plan, a creditor need not believe a consumer will reuse a particular feature of the plan. Also, current comment 2(a)(20)–5 indicates that a creditor may verify credit information such as a consumer's continued income and employment status or information for security purposes.

The Board believes that in certain circumstances treating such credit as open-end is inappropriate under Regulation Z, and accordingly proposes a number of revisions to § 226.2(a)(20) and the accompanying commentary. Closed-end disclosures are more appropriate than open-end disclosures unless the consumer's credit line generally replenishes to the extent that he or she repays outstanding balances so that the consumer may continue to borrow and take advances under the plan without having to obtain separate approval for each subsequent advance. Replenishment of the amount of credit available to a consumer in good standing without the need for separate underwriting or approval of each advance distinguishes open-end credit from a series of advances made pursuant to separate closed-end loan commitments, such as the automobile loan described above. For example, if a consumer makes two payments of $500 that reduce the outstanding principal balance on the line of credit, the consumer generally should be able to obtain an additional $1,000 of credit under the open-end plan without having a creditor separately underwriting or evaluating whether the consumer can borrow the $1,000.

The Board proposes to revise comment 2(a)(20)–2 to clarify that while a consumer's account may contain different sub-accounts, each with different minimum payment or other payment options, each sub-account must meet the self-replenishing criterion. In particular, proposed comment 2(a)(20)–2 would provide that repayments of an advance for any sub-account must generally replenish a single credit line for that sub-account so that the consumer may continue to borrow and take advances under the plan to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance.

Due to the concerns noted above regarding closed-end automobile loans being characterized as features of so-called open-end plans, the Board proposes to delete comment 2(a)(20)–3.ii. While there may be circumstances under which it would be more reasonable for a financial institution to make advances from an open-end line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan, the Board believes that the current example places inappropriate emphasis on the identity of the creditor rather than the type of credit being extended by that creditor.

TILA Section 103(i) provides that a plan can be an open-end credit plan even if the creditor verifies credit information from time to time. 15 U.S.C. 1602(i). The Board believes this provision is not intended to permit a creditor to separately underwrite each advance made to a consumer under an open-end plan or account. Such a process could result in closed-end credit being deemed open-end credit. The Board proposes to clarify in comment 2(a)(20)–5 that in general, a credit line is self-replenishing if a consumer can obtain further advances or funds without being required to separately

designated item, (3) the amount of the initial purchase relative to the credit limit, (4) the extent to which the creditor reasonably solicits customers to make additional purchases, and (5) whether the creditor has information on consumers with the credit line showing that they have made repeat purchases. The proposed revisions also would have provided that a line of credit generally is not self-replenishing if the initial line of credit is less than, or not much more than, the amount of the item purchased to open the credit line (or the minimum monthly payments are so low that the credit line is not reusable for an extended period of time). *See* 62 FR 64,769, December 9, 1997.

apply for those additional advances, and without undergoing a separate review by the creditor of that consumer's credit information, in order to obtain approval for each such additional advance.

Notwithstanding this proposed change, a creditor could verify credit information to ensure that the consumer's creditworthiness has not deteriorated (and could revise the consumer's credit limit or account terms accordingly). However, to perform such an inquiry for each specific credit request would go beyond verification and would more closely resemble underwriting of closed-end credit. The Board recognizes that a creditor may need to review, and as appropriate, decrease the amount of credit available to a consumer from time to time to address safety and soundness and other concerns. Such a review would not be affected by the proposed changes, as explained in proposed comment 2(a)(20)–5.

These revisions are not intended to impact home-equity lines of credit (HELOCs), which may have a fixed draw period (during which time a consumer may continue to take advances to the extent that he or she repays the outstanding balance) followed by a repayment period where the consumer may no longer draw against the line, as closed-end credit. The Board seeks comment regarding the proposed rule's impact on HELOCs.

Comment 2(a)(20)–5.ii. currently notes that a creditor may reduce a credit limit or refuse to extend new credit due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. The Board's proposal would delete the reference to changes in the economy to simplify this provision.

The Board also proposes a technical update to comment 2(a)(20)–4 to delete a reference to ''china club plans,'' which may no longer be very common. No substantive change is intended.

2(a)(24) Residential Mortgage Transaction

Comment 2(a)(24)–1, which identifies key provisions affected by the term ''residential mortgage transaction,'' is revised to include a reference to § 226.32, correcting an inadvertent omission.

Section 226.3 Exempt Transactions

Section 226.3 implements TILA Section 104 and provides exemptions for certain classes of transactions specified in the statute. 15 U.S.C. 1603.

The Board proposes a number of substantive and technical revisions to § 226.3 as described below. The substance of footnote 4 is moved to the commentary. *See* comment 3–1.

3(a) Business, Commercial, Agricultural, or Organizational Credit

Section 226.3(a) provides, in part, that the regulation does not apply to extensions of credit primarily for business, commercial or agricultural purposes. The Board received no comments regarding this exemption in regard to the December 2004 ANPR. Questions have arisen from time to time, however, regarding whether transactions made for business purposes on a consumer purpose credit card are exempt from TILA. The Board seeks to provide clarification regarding this question. The determination as to whether a credit card account is primarily for consumer purposes or business purposes is best made when the account is opened, rather than on a transaction-by-transaction basis, and thus the Board is proposing to add a new comment 3(a)–2 to clarify that transactions made for business purposes on a consumer-purpose credit card are covered by TILA (and, conversely, that purchases made for consumer purposes on a business-purpose credit card are exempt from TILA). Other sections of the commentary regarding § 226.3(a) would be renumbered accordingly. A new comment 3(a)–7 would provide guidance on card renewals, consistent with proposed comment 3(a)–2.

3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling

Section 226.3(b) exempts from Regulation Z extensions of credit not secured by real property or a dwelling, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000. The $25,000 threshold in § 226.3(b) is the same as the statutory threshold set in TILA Section 104(3). 15 U.S.C. 1603(3).

In the December 2004 ANPR, the Board solicited comment as to whether the rules implementing TILA Section 104 needed to be updated. Q58. The Board received several comments regarding the $25,000 threshold. One consumer group noted that the $25,000 figure is outdated due to inflation and should be increased. One bank noted that the threshold remains appropriate for unsecured credit but suggested that the Board might consider at a later stage of the Regulation Z review whether the $25,000 figure should be raised for secured credit, such as automobile loans. The Board agrees that the § 226.3(b) threshold would be more appropriately considered in connection with its planned review of the closed-end credit provisions of Regulation Z and is not proposing to take any action at the present time. In delaying consideration of the $25,000 threshold to the closed-end Regulation Z review, the Board expresses no view on whether the $25,000 threshold is appropriate for open-end (not home-secured) credit. Rather, the Board proposes to review the threshold for all credit covered by TILA at the same time.

3(c) Public Utility Credit

Section 226.3(c) exempts from Regulation Z extensions of credit involving public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission, if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. 15 U.S.C. 1603(4).

The Board received no comments on the December 2004 ANPR regarding the applicability and scope of § 226.3(c). However, the Board has received inquiries from time to time regarding the applicability of Regulation Z to service plans for cellular telephones. In addition, in light of the deregulation in recent years by some states of utilities such as gas and electric services, the Board believes that it may be appropriate to reconsider the scope of the public utility credit exemption more generally. The Board also notes that due to technological advances, there may be additional types of services, such as certain Internet services, for which exemption from Regulation Z may be appropriate. The Board is not proposing to take any action at the present time, however, because these issues would be better considered in the context of the Board's upcoming rulemaking regarding the closed-end credit provisions of Regulation Z.

3(g) Employer-Sponsored Retirement Plans

The Board has received questions from time to time regarding the applicability of TILA to loans taken against employer-sponsored retirement plans. Pursuant to TILA Section 104(5), the Board has the authority to exempt transactions for which it determines that coverage is not necessary in order to carry out the purposes of TILA. 15 U.S.C. 1603(5). The Board also has the authority pursuant to TILA Section 105(a) to provide adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board proposes to add to the regulation a new § 226.3(g), which would exempt loans taken by employees against their employer-sponsored retirement plans qualified under Section 401(a) of the Internal Revenue Code and tax-sheltered annuities under Section 403(b) of the Internal Revenue Code, provided that the extension of credit is comprised of fully-vested funds from such participant's account and is made in compliance with the Internal Revenue Code. 26 U.S.C. 1 *et seq.*; 26 U.S.C. 401(a); 26 U.S.C. 403(b).

The Board believes that an exemption for loans taken against funds invested in such types of employer-sponsored retirement plans is appropriate for the following reasons. The consumer's interest and principal payments on such a loan are reinvested in the consumer's own account, and there is no third-party creditor imposing finance charges on the consumer. Also, TILA disclosures would be of very limited, if any, value. The costs of a loan taken against assets invested in a 401(k) plan, for example, are not comparable to the costs of a third party loan product, because a consumer pays the interest on a 401(k) loan to himself or herself rather than to a third party. Moreover, plan administration fees must be disclosed under Department of Labor regulations. *See* 29 CFR 2520.1023(1).

Family Trusts

The Board also has from time to time received inquiries regarding TILA coverage of family trusts created for estate planning purposes. Because most of these questions pertain to real-estate secured loans, the applicability of the exemptions in § 226.3 to these types of estate planning arrangements would be better considered in the context of the Board's upcoming closed-end Regulation Z review.

Section 226.4 Finance Charge

Various provisions of TILA and Regulation Z specify how and when the cost of consumer credit as a dollar amount, the ''finance charge,'' is to be disclosed. The rules for determining which charges make up the finance charge are set forth in TILA Section 106 and Regulation Z § 226.4. 15 U.S.C. 1605. Some rules apply only to open-end credit and others apply only to closed-end credit, while some apply to both. With limited exceptions discussed below, the Board is not proposing to change § 226.4 for either closed-end credit or open-end credit.

The Board is aware of longstanding criticisms that the definition of the ''finance charge'' in § 226.4, as interpreted in the regulation and the related commentary, is too narrow, too broad, or too vague. In a 1998 report to Congress, the Board discussed these concerns, and proposed solutions, in the context of closed-end mortgage loans.[7] In this proposal, the Board addresses concerns about the definition of the ''finance charge'' in the context of open-end (not home-secured) plans through changes to § 226.5, § 226.6, and § 226.7 to simplify disclosure of charges on such plans. The Board is not proposing to address these concerns through changes to § 226.4, with limited exceptions. The Board proposes to revise § 226.4 and related commentary to address (1) transaction charges imposed by credit card issuers, such as charges for obtaining cash advances from ATMs and for making purchases in foreign currencies, and (2) charges for credit insurance, debt cancellation coverage, and debt suspension coverage.

4(a) Definition

Under the definition of ''finance charge'' in TILA Section 106 and Regulation Z § 226.4(a), a charge specific to a credit transaction is ordinarily a finance charge. *15* U.S.C. 1605. *See* also § 226.4(b)(2). However, also under Section 106 and § 226.4(a), the finance charge does not include any charge of a type payable in a ''comparable cash transaction.'' Under the staff commentary to § 226.4(a), in determining whether a charge associated with a credit transaction is a finance charge, the creditor should compare the credit transaction in question with a ''similar'' cash transaction, if one exists. *See* comment 4(a)–1. The commentary states a general principle for applying this rule in the case of credit that finances the sale of property or services: the creditor should compare charges with those that would be payable if the services or property were purchased using cash rather than a loan. Thus, for example, if an escrow agent charges the same fee regardless of whether real estate is bought in cash or with a mortgage loan, then the agent's fee is not a finance charge.

In other cases, however, particularly in cases involving credit cards, determining which, if any, transaction is a ''similar'' or ''comparable'' cash transaction for purposes of § 226.4(a) can be difficult. For example, when consumers became able to take cash advances on credit card accounts using ATMs, a question arose as to whether a fee charged by a card issuer for the transaction was a finance charge if the issuer charged the same fee for using a debit card to withdraw cash from an asset account. The Board solicited comment on this question in 1983 and adopted staff comment 4(a)–4 in 1984. 48 FR 54,642; December 6, 1983 and 49 FR 40,560; October 17, 1984. That comment indicates that the fee is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. Another comment indicates that the fee is an ''other charge.'' *See* current comment 6(b)–1(vi). Accordingly, the fee must be disclosed at account opening and on the periodic statement, but it is not labeled as a ''finance charge'' nor included in the effective APR.

Since comment 4(a)–4 was adopted, questions have been raised about its scope and application. For example, the comment does not address whether it applies when an affiliate of the card issuer, but not the card issuer itself, issues a debit card. Even in the seemingly simple case where the credit card issuer itself issues a debit card, a variety of complexities arise. The issuer may assess an ATM fee for one kind of deposit account (for example, an account with a low minimum balance) but not for another. The comment does not indicate which account is the proper basis for comparison.

Questions have also been raised about whether disclosure of the charge pursuant to comments 4(a)–4 and 6(b)–1.iv. is meaningful to consumers. Under the comment, the disclosure a consumer receives after incurring a fee for taking a cash advance through an ATM depends on the structure of the institution that issued the credit card. If the credit card issuer does not provide asset accounts and is not affiliated with an institution that does, then it must disclose the charge as a finance charge. If the credit card issuer provides asset accounts and offers debit cards on those accounts, then, depending on the circumstances, the issuer must not disclose the charge as a finance charge. It is not clear that the distinction is meaningful to consumers.

Recently, a question has arisen about the proper disclosure of another kind of transaction fee imposed on credit cards. The question is whether fees that credit cardholders are assessed for making purchases in a foreign currency or outside the United States—for example, when the cardholder travels abroad—are finance charges. The question has arisen in litigation between consumers

[7] Board of Governors of the Federal Reserve System and Department of Housing and Urban Development, *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act*, July 1998.

and major card issuers.[8] Some card issuers have argued by analogy to comment 4(a)–4 that a foreign transaction fee is not a finance charge if the fee does not exceed the issuer's fee for using a debit card for the same purchase. Some card issuers disclose the foreign transaction fee as a finance charge and include it in the effective APR, but others do not.

The uncertainty about proper disclosure of charges for foreign transactions and for cash advances from ATMs reflects the inherent complexity of seeking to distinguish transactions that are ''comparable cash transactions'' to credit card transactions from transactions that are not. The Board believes that clearer guidance may result from a new and simpler approach that treats as a finance charge any fee charged by credit card issuers for transactions on their credit card plans. This guidance may be helpful to creditors in determining which charges must be included in the computation of the effective APR, if the Board retains the effective APR. *See* section-by-section analysis to § 226.7(b)(7). Such an approach would also provide more meaningful disclosures to consumers by assuring a consistent approach to the disclosure of transaction fees.

The current approach of providing guidance on a case-by-case (fee-by-fee) basis, such as for ATM fees, has not provided sufficient certainty for many creditors about how to disclose transaction charges on credit cards. Moreover, to the extent creditors have adopted different disclosure practices in the face of regulatory uncertainty, consumers may have had difficulty understanding the disclosures, since, for example, one creditor might disclose an ATM fee as a finance charge while another creditor may disclose the fee as an ''other'' charge. Thus, while the Board could adopt guidance specific to fees as they arise, such as the Board did in 1984 for the ATM fee and could do for the foreign transaction fee, it is not clear that fee-by-fee guidance is sufficient to both facilitate compliance by credit card issuers and promote understanding by consumers.

It is also not clear that an attempt to adopt general rules for distinguishing comparable transactions from non-comparable transactions, in the case of credit cards, would adequately facilitate compliance by credit card issuers and promote understanding by cardholders. One major difficulty in formulating such rules would be deciding whether to adopt the perspective of the card issuer or that of the cardholder. For example, a transaction on an asset account with a card issuer may be comparable to a credit card transaction from the perspective of the card issuer, but not from the perspective of a cardholder who does not have an asset account with the issuer. A rule based on the issuer's perspective may confuse consumers; it may not be reasonable to expect a consumer to understand that one transaction fee is a finance charge and the other is not because one card issuer issues a debit card and the other does not. Yet a rule based on the cardholder's perspective may not be practicable for the issuer to implement; the issuer may not be able to determine whether a particular consumer has an asset account with another institution and, if so, the amount of the fee charged on the account. As explained above in the context of the fee for cash advances from ATMs, even when a rule is based on the card issuer's perspective, the card issuer may have difficulty determining which asset account, precisely, is the relevant basis for comparison. The difficulty of determining which perspective to adopt increases in a case such as a fee for a purchase conducted in a foreign currency. From the perspective of the consumer, the debit card is not the only alternative to the credit card; the consumer may also pay in cash.

Thus, having considered alternative approaches, the Board is proposing to adopt a simple interpretive rule that any transaction fee on a credit card plan is a finance charge, regardless of whether the issuer in its capacity as a depository institution imposes the same or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. This proposal would be implemented by removing staff comment 4(a)–4 and replacing it with a new comment of the same number reflecting this rule. The comment would give as examples of such finance charges a fee imposed by the issuer for foreign transactions and a fee imposed by the issuer for taking a cash advance at an ATM.[9] Such guidance would be consistent with TILA Section 106, 15 U.S.C. 1605, which gives the Board discretion to determine whether a given credit transaction has a comparable cash transaction within the meaning of the statute. This guidance would also facilitate compliance and promote consumer understanding. *See* TILA Section 105(a), 15 U.S.C. 1604(a).

The Board seeks comment on whether this new approach would facilitate compliance and improve consumer understanding without causing unintended consequences.

Comment 4(a)–1 provides examples of charges in comparable cash transactions that are not finance charges. Among the examples are discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular institution. The Board solicits comment on whether the example is still useful, or should be deleted as unnecessary or obsolete.

4(b) Examples of Finance Charges

Charges for credit insurance or debt cancellation or suspension coverage. Premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is ''written in connection with'' a credit transaction. 15 U.S.C. 1605(b); § 226.4(b)(7). Creditors may exclude from the finance charge premiums for credit insurance if they disclose the cost of the insurance and the fact that the insurance is not required to obtain credit. In addition, the statute requires creditors to obtain an affirmative written indication of the consumer's desire to obtain the insurance, which, as implemented in § 226.4(d)(1)(iii), requires creditors to obtain the consumer's initials or signature. 15 U.S.C. 1605(b). In 1996, the Board expanded the scope of the rule to include plans involving charges or premiums for debt cancellation coverage. *See* § 226.4(b)(10), § 226.4(d)(3). *See* also 61 FR 49,237; September 19, 1996. Currently, however, insurance or coverage sold after consummation of a closed-end credit transaction or after the opening of an open-end plan and upon a consumer's request is considered not to be ''written in connection with the credit transaction,'' and, therefore, a charge for such insurance or coverage is not a finance charge. *See* comment 4(b)(7) and (8)–2.

The Board is proposing a number of revisions to these rules:

(1) The same rules that apply to debt cancellation coverage would be applied explicitly to debt suspension coverage. However, to exclude the cost of debt suspension coverage from the finance charge, creditors would be required to inform consumers, as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These

[8] *See* Third Consolidated Amended Class Action Complaint at 47–48, In re Currency Conversion Fee Antitrust Litigation, MDL Docket No. 1409 (S.D.N.Y.). The court approved a settlement on a preliminary basis on November 8, 2006.

[9] The proposed change to comment 4(a)–4 would not affect disclosure of ATM fees assessed by institutions other than the credit card issuer. *See* proposed § 226.6(b)(1)(ii)(A).

proposed revisions would apply to all open-end plans and closed-end credit transactions.

(2) Creditors could exclude from the finance charge the cost of debt cancellation and suspension coverage for events beyond those permitted today, namely, life, accident, health, or loss-of-income. This proposed revision would also apply to all open-end plans and closed-end credit transactions.

(3) The meaning of insurance or coverage ''written in connection with'' an open-end plan would be expanded to cover sales made throughout the life of an open-end (not home-secured) plans. Under the proposal, for example, consumers solicited for the purchase of optional insurance or debt cancellation or suspension coverage for existing credit card accounts would receive disclosures about the cost and optional nature of the product at the time of the consumer's request to purchase the insurance or coverage. Home-equity lines of credit (HELOCs) subject to § 226.5b and closed-end transactions would not be affected by this proposed revision.

(4) For telephone sales, creditors offering open-end (not home-secured) plans would be provided with flexibility in evidencing consumers' requests for optional insurance or debt cancellation or suspension coverage, consistent with rules published by federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions and guidance published by the Office of the Comptroller of the Currency (OCC) regarding the sale of debt cancellation and suspension products. *See* 12 CFR part 208.81 *et seq.* regarding insurance sales; 12 CFR part 37 regarding debt cancellation and debt suspension products. For telephone sales, creditors could provide disclosures orally, and consumers could request the insurance or coverage orally, if the creditor maintains evidence of compliance with the requirements, and mails written information within 3 days after the sale. HELOCs subject to § 226.5b and closed-end transactions would not be affected by this proposed revision.

All of these products serve similar functions but some are considered insurance under state law and others are not. Taken together, the proposed revisions would provide consistency in how creditors deliver, and consumers receive, information about the cost and optional nature of similar products.

4(b)(7) and (8) Insurance Written in Connection With Credit Transaction

Premiums or other charges for insurance for credit life, accident, health, or loss-of-income, loss of or damage to property or against liability arising out of the ownership or use of property are finance charges if the insurance or coverage is written in connection with a credit transaction. 15 U.S.C. 1605(b) and (c); § 226.4(b)(7) and (8). Comment 4(b)(7) and (8)–2 provides that insurance is not written in connection with a credit transaction if the insurance is sold after consummation on a closed-end transaction or after an open-end plan is opened and the consumer requests the insurance. The Board believes this approach remains sound for closed-end transactions, which typically consist of a single transaction with a single advance of funds. Consumers with open-end plans, however, retain the ability to obtain advances of funds long after account opening, so long as they pay down the principal balance. That is, a consumer can engage in credit transactions throughout the life of a plan.

Accordingly, under proposed revisions to comment 4(b)(7) and (8)–2, insurance purchased after an open-end (not home-secured) plan was opened would be considered to be written ''in connection with a credit transaction.'' Proposed new comment 4(b)(10)–2 would give the same treatment to purchases of debt cancellation or suspension coverage. As proposed, therefore, purchases of voluntary insurance or coverage after account opening would trigger disclosure and consent requirements. For purchases by telephone, creditors would be permitted to provide disclosures and obtain consent orally, so long as they meet requirements intended to ensure the purchase is voluntary. *See* proposed § 226.4(d)(4).

4(b)(9) Discounts

Comment 4(b)(9)–2, which addresses cash discounts to induce consumers to use cash or other payment means instead of credit cards or open-end plans is revised for clarity. No substantive change is intended.

4(b)(10) Debt Cancellation and Debt Suspension Fees

As discussed above, premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is written in connection with a credit transaction. In 1996, the Board amended § 226.4 to make clear that the term ''finance charge'' includes charges or premiums paid for debt cancellation coverage. *See* § 226.4(b)(10). Although debt cancellation fees meet the definition of ''finance charge,'' they may be excluded from the finance charge on the same conditions as credit insurance premiums. *See* § 226.4(d)(3).

Recent years have seen two developments in the market for coverage of this type. First, creditors have been selling a related, but different, product called debt suspension. Debt suspension is essentially the creditor's agreement to suspend, on the occurrence of a specified event, the consumer's obligation to make the minimum payment(s) that would otherwise be due. During the suspension period, interest may continue to accrue or it may be suspended as well, depending on the plan. The borrower may be prohibited from using the credit plan during the suspension period. In a second development, creditors have been selling debt suspension coverage for events other than loss of life, health, or income, such as a wedding, a divorce, the birth of child, a medical emergency, and military deployment.

The Board is proposing to revise § 226.4(b)(10) to make it explicit that charges for debt suspension coverage are finance charges. In the proposed commentary, debt suspension coverage would be defined as coverage that suspends the consumer's obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The commentary would clarify that the term debt suspension coverage as used in § 226.4(b)(10) does not include ''skip payment'' arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of payment. (A skip payment fee, although a finance charge, would not be factored into the effective APR under the proposal. *See* proposed § 226.14(e).) These revisions would apply to closed-end as well as open-end credit transactions. It appears appropriate to consider charges for debt suspension products to be finance charges, because these products operate in a similar manner to debt cancellation, and re-allocate the risk of non-payment between the borrower and the creditor. The conditions under which debt cancellation and debt suspension charges may be excluded from the finance charge are discussed under § 226.4(d)(3), below.

4(c) Charges Excluded From the Finance Charge

4(c)(1)

Section 226.4(c)(1) excludes from the finance charge application fees charged to all applicants for credit, whether or not credit is actually extended. Application fees are charged for both closed-end and open-end credit transactions, and represent an additional cost to consumers who obtain credit. Because application fees are more prevalent for home-secured credit, the Board will consider whether to revise § 226.4(c)(1) in its upcoming review of rules for home-secured credit.

As discussed below in the section-by-section analysis to § 226.6, the Board proposes to require for open-end (not home-secured) plans, the disclosure of charges imposed as part of the plan, which include fees that must be paid to receive access to the plan, without regard to whether the fees are or are not finance charges. Application fees charged to all applicants for credit, whether or not credit is actually extended, would be considered charges imposed as part of the plan, and would be included in the account-summary table given at account opening. *See* proposed § 226.6(b)(1)(i). This would provide useful information to consumers about the total cost of obtaining credit. The fee, if financed, would also be included among the fees required to be grouped on periodic statements. *See* proposed § 226.7(b)(6).

4(d) Insurance and Debt Cancellation Coverage

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

As explained under § 226.4(b)(10), debt cancellation fees and, as clarified in this proposal, debt suspension fees meet the definition of ''finance charge.'' Under current § 226.4(d)(3), debt cancellation fees may be excluded from the finance charge on the same conditions as credit insurance premiums. These conditions are: The coverage is not required and this fact is disclosed in writing, and the consumer affirmatively indicates in writing a desire to obtain the coverage after written disclosure to the consumer of the cost. Debt cancellation coverage that may be excluded from the finance charge is limited to coverage that provides for cancellation of all or part of a debtor's liability (1) in case of accident or loss of life, health, or income; or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as ''gap'' coverage, frequently sold in connection with motor vehicle loans). *See* current § 226.4(d)(3)(ii).

To address the development of debt cancellation and debt suspension coverage discussed earlier, the OCC adopted, for national banks, substantive limitations and procedures for disclosure and affirmative election on the sale of such coverage. *See* 12 CFR part 37. Some states have also adopted regulations that address these products, or incorporate the OCC regulations under parity laws.

The Board solicited comment in 2003 on whether and how to address disclosure of these kinds of coverage under TILA. 68 FR 68,793; December 10, 2003. About 30 commenters responded, the vast majority of them creditors or vendors. Several creditors and vendors urged the Board to expressly permit creditors to exclude from the finance charge fees for products that cover any event to which a creditor and borrower agree, not just the events listed in the regulation, and fees for agreements that suspend, rather than cancel, debt repayment. Some commenters disagreed. A major consumer group urged the Board to include even voluntary credit insurance premiums and debt cancellation fees in the finance charge. The Board deferred a decision on these issues until this review.

The December 2004 ANPR did not specifically seek comment again on these issues. Nonetheless, a coalition of companies that issue or administer debt cancellation and debt suspension agreements submitted two comments in response to the December 2004 ANPR reiterating the 2003 request by industry commenters that the Board modify § 226.4(d)(3) to cover any triggering event and explicitly recognize that debt suspension agreements are also covered by that provision. These companies also requested that the Board revise § 226.4(d)(3) to provide that the disclosures and consumer affirmative request required as conditions to excluding the fee from the finance charge may be provided orally.

Debt cancellation coverage and debt suspension coverage are fundamentally similar to the extent they offer a consumer the ability to pay in advance for the right to reduce the consumer's obligations under the plan on the occurrence of specified events that could impair the consumer's ability to satisfy those obligations. The two types of coverage are, however, different in a key respect. One cancels debt, at least up to a certain agreed limit, while the other merely suspends the payment obligation while the debt remains constant or increases, depending on coverage terms.

The Board proposes to revise § 226.4(d)(3) to expressly permit creditors to exclude charges for *voluntary* debt suspension coverage from the finance charge when, after receiving certain disclosures, the consumer affirmatively requests such a product. The Board also proposes to add a disclosure, to be provided as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These revisions would apply to closed-end as well as open-end credit transactions. Model Clauses and Samples are proposed at Appendix G–16(A) and G–16(B) and H–17(A) and H–17(B).

The same industry coalition has also requested that charges for debt cancellation or debt suspension coverage be excludable from the finance charge when the coverage applies to events other than the events covered by the product lines identified in current § 226.4(d)(3)(ii), namely, accident or loss of life, health, or income. The identification of those events in § 226.4(d)(3)(ii) is based on TILA Section 106(b), which addresses credit insurance for accident or loss of life or health. 15 U.S.C. 1605(b). That statutory provision reflects the regulation of credit insurance by the states, which may limit the types of insurance that insurers may sell. Many states, however, do not restrict debt cancellation or debt suspension coverage to a select few events, and regulations of the OCC expressly permit national banks to sell debt cancellation and debt suspension coverage for any event.

The Board proposes to continue to limit the exclusion permitted by § 226.4(d)(3) to charges for coverage for accident or loss of life, health, or income. The Board also proposes, however, to add comment 4(d)(3)–3 to clarify that, if debt cancellation or debt suspension coverage for two or more events is sold at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income. This approach would recognize that debt cancellation and suspension coverage often are not limited by applicable law to the events allowed for insurance and it also would be consistent with the purpose of Section 106(b). 15 U.S.C. 1605(b).

The regulation provides guidance on how to disclose the cost of debt cancellation coverage. *See* proposed § 226.4(d)(3)(ii). The Board seeks comment on whether additional guidance is needed for debt suspension coverage, particularly for closed-end loans.

For the reasons discussed below, § 226.4(d)(4) would be added to provide flexibility in telephone sales to obtain consumers' requests for voluntary debt cancellation and debt suspension coverage on open-end (not home-secured) plans.

In a technical revision, the substance of footnotes 5 and 6 would be moved to the text.

4(d)(4) Telephone Purchases

As discussed above, TILA Section 106(b), 15 U.S.C. 1605(b), permits creditors to exclude from the finance charge premiums for credit insurance if, among other conditions, the creditor obtains a specific written indication of the consumer's desire to obtain the insurance. This requirement is implemented in § 226.4(d)(1) by requiring written initials or a signature. The Board expanded in 1996 the types of products covered by the exclusion to include debt cancellation agreements, and now proposes to extend the exclusion to debt suspension products. As mentioned, an industry coalition has requested that the Board permit the disclosures and affirmative consumer request, which are conditions to this exclusion, to be provided orally.

Congress has recognized the practice of telephone sales for the purchase of insurance products. 12 U.S.C. 1831x(c)(1)(E). Similarly, the OCC has issued telephone sales guidelines for national banks that sell debt cancellation and debt suspension coverage. 12 CFR parts 37.6(c)(3), 37.7(b). Accordingly, the Board is proposing an exception to the requirement to obtain a written signature or initials for telephone purchases of credit insurance or debt cancellation and debt suspension coverage on an open-end (not home-secured) plan. Under new § 226.4(d)(4), for telephone purchases the creditor may make the disclosures orally and the consumer may affirmatively request the insurance or coverage orally, provided that the creditor (1) maintains reasonable procedures to provide the consumer with the oral disclosures and maintains evidence that demonstrates the consumer then affirmatively elected to purchase the insurance or coverage; and (2) mails the disclosures under § 226.4(d)(1) or § 226.4(d)(3) within three business days after the telephone purchase. Comment 4(d)(4)–1 would provide that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent.

Requiring a consumer's written signature or initials is intended to evidence that the consumer is purchasing the product voluntarily; the proposal contains safeguards intended to insure that oral purchases are voluntary. Under the proposal, creditors must maintain tapes or other evidence that the consumer received required disclosures orally and affirmatively requested the product. Comment 4(d)(4)–1 indicates that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. In addition to oral disclosures, under the proposal consumers will receive written disclosures shortly after the transaction. The fee will also appear on the first monthly periodic statement after the purchase, and, as applicable, thereafter. Consumer testing conducted for the Board suggests that consumers review the transactions on their statements carefully. Moreover, the Board proposes to better highlight fees, including insurance and coverage fees, on statements. Consumers who are billed for insurance or coverage they did not purchase may dispute the charge as a billing error. These safeguards are expected to ensure that purchases of credit insurance or debt cancellation or suspension coverage by telephone are voluntary.

The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes it is appropriate to exempt, for open-end (not home-secured) plans, telephone sales of credit insurance or debt cancellation or debt suspension plans from the requirement to obtain a written signature or initials from the consumer. As noted above, the consumer would continue to be protected by a variety of safeguards to assure that the purchase is voluntary, including a requirement that the creditor maintain tapes or other evidence of the transaction, the receipt of written disclosures shortly after the transaction, and inclusion of fees on periodic statements, for which consumers may dispute billing errors. At the same time, the proposal should facilitate the convenience to both consumers and creditors of conducting transactions by telephone. The proposal, therefore, has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit. The Board welcomes comment on this matter.

Section 226.5 General Disclosure Requirements

Section 226.5 contains format and timing requirements for open-end credit disclosures. Under the current rules, a creditor must disclose a charge that is a ''finance charge'' or ''other charge'' before the account is opened, before the charge is added to the plan after account opening and before the charge is increased. These disclosures must be in writing. As discussed below, the proposal seeks to reform the rules governing disclosure of charges before they are imposed. Under the proposal: (1) All charges imposed as part of the plan would be disclosed before they are imposed; (2) specified charges would continue to be disclosed in writing at account opening, and before being increased or newly introduced; and (3) other charges imposed as part of the plan could be disclosed orally at any relevant time before the consumer becomes obligated to pay the charge. The proposed reform is intended to assure that all charges imposed as part of the plan are disclosed before they are imposed, simplify the rules for identifying such charges, and better match the timing and method of disclosure with reasonable industry practices and consumer expectations. The proposal responds to comments received on the December 2004 ANPR that criticize current rules (1) as unduly vague and inconsistent in identifying charges covered by TILA, and (2) as failing to recognize that some transactions on the plan between the consumer and the creditor are appropriately, or even necessarily, conducted by telephone.

5(a) Form of Disclosures

The Board is proposing substantive changes to § 226.5(a) and the associated commentary regarding the standard to provide ''clear and conspicuous'' disclosures. In addition, creditors would be required to use consistent terminology in all open-end TILA-required disclosures. In technical revisions, the Board proposes to rearrange certain provisions in § 226.5(a) for clarity.

5(a)(1) General

Clear and conspicuous standard. TILA Section 122(a) mandates that all TILA-required disclosures be made clearly and conspicuously. 15 U.S.C. 1632(a). The Board has implemented this requirement for open-end credit plans in § 226.5(a)(1). Under current comment 5(a)(1)–1, the Board has interpreted clear and conspicuous to mean that the disclosure must be in a reasonably understandable form. In most cases, this standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, nor that numerical amounts or percentages be in any particular type size.

However, the Board has previously determined that certain disclosures in Subpart B of Regulation Z are subject to a higher standard in meeting the clear and conspicuous requirement due to the importance of the disclosures and the context in which they are given. Specifically, disclosures in credit and charge card applications and solicitations subject to § 226.5a must be both in a reasonably understandable form and readily noticeable to the consumer. *See* current comment 5a(a)(2)–1, which the Board is proposing to amend as discussed below.

1. *Readily noticeable standard.* The Board is proposing to highlight certain information in a tabular format in the account-opening disclosures pursuant to § 226.6(b)(4); on checks that access a credit card account pursuant to § 226.9(b)(3); in change-in-terms notices pursuant to § 226.9(c)(2)(iii)(B); and in disclosures when a rate is increased due to delinquency, default or as a penalty pursuant to § 226.9(g)(3)(ii). As discussed in further detail in the section-by-section analysis to §§ 226.6(b), 226.9(b), 226.9(c), and 226.9(g), consumer testing conducted for the Board suggests that highlighting important information in a tabular format helps consumers locate the information disclosed in these tables much more easily. Because these disclosures would be highlighted in a tabular format similar to the table required with respect to credit card applications and solicitations under § 226.5a, the Board is proposing that these disclosures also be in a reasonably understandable form and readily noticeable to the consumer. The Board is proposing to amend comment 5(a)(1)–1 accordingly. The Board also is proposing to move the guidance on the meaning of ''reasonably understandable form'' to comment 5(a)(1)–2. Current comment 5(a)(1)–2, which provides guidance on what constitutes an ''integrated document,'' is moved to comment 5(a)(1)–4.

The Board also proposes to add comment 5(a)(1)–3 to provide guidance on the meaning of the readily noticeable standard. Specifically, new comment 5(a)(1)–3 provides that to meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3); highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. The Board believes that with respect to these disclosures, special formatting requirements, such as a tabular format and font size requirements, are needed to highlight for consumers the importance and significance of the disclosures. The Board notes that this approach of requiring a minimum of 10-point font for certain disclosures is consistent with the approach taken recently by eight federal agencies (including the Board) in issuing a proposed model form that financial institutions may use to comply with the privacy notice requirements under Section 503 of the Gramm-Leach-Bliley Act. 15 U.S.C. 6803(e); 72 FR 14,940; Mar. 29, 2007. In the privacy proposal, the eight federal agencies indicate that financial institutions that use the privacy model form must use an easily readable type font; easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

2. *Disclosures subject to the clear and conspicuous standard.* The Board has received questions on the types of communications that are subject to the clear and conspicuous standard. Thus, the Board proposes comment 5(a)(1)–5 to make clear that all required disclosures and other communications under Subpart B of Regulation Z are considered disclosures required to be clear and conspicuous. This would include, for example, the disclosure by a person other than the creditor of a finance charge imposed at the time of honoring a consumer's credit card under § 226.9(d) and the correction notice required to be sent to the consumer under § 226.13(e).

Oral disclosure. In order to give guidance about the meaning of clear and conspicuous for oral disclosures, the Board proposes to amend the guidance on what constitutes a ''reasonably understandable form,'' in proposed comment 5(a)(1)–2. This amendment is based in part on the Federal Trade Commission's (FTC) guidance on oral disclosure in its publication *Complying with the Telemarketing Sales Rule* (available at the FTC's Web site). Oral disclosures would be considered to be in a reasonably understandable form when they are given at a volume and speed sufficient for a consumer to hear and comprehend the disclosures.

5(a)(1)(ii)

Section 226.5(a)(1)(ii) provides that in general, disclosures for open-end plans must be provided in writing and in a retainable form.

Oral disclosures. The Board is proposing that certain charges may be disclosed after account opening. *See* proposed § 226.5(b)(1)(ii). The goal of this proposal is to better ensure that consumers receive disclosures at relevant times; some charges may not be relevant to a consumer at account opening but may become relevant later. The Board is also proposing to permit creditors to make the form of disclosure more relevant to consumers. A written form of disclosure has obvious merit at account opening, when a consumer must assimilate a lot of information that may influence major decisions by the consumer about how, or even whether, to use the account. During the life of the account, in contrast, a consumer will sometimes need to decide whether to purchase a single service from the creditor, a service that may not be central to the consumer's use of the account (for example, the service of providing documentary evidence of transactions). Moreover, during the life of the account, the consumer may become accustomed to purchasing such services by telephone. The consumer and the creditor may find it convenient to conduct the transaction by telephone, and will, accordingly, expect to receive a disclosure of the charge for the service during the same telephone call. For these reasons, the Board is proposing to permit creditors to disclose orally charges not specifically identified by the proposed regulation in § 226.6(b)(4) as critical to disclose in writing at account opening. Further, the Board proposes that creditors be provided with the same flexibility when the cost of such a charge changes or is newly introduced, as discussed in the section-by-section analysis to § 226.9(c). The proposal, set forth in§ 226.5(a)(1)(ii)(A), is intended to be consistent with consumers' expectations and with the business practices of card issuers.

Under the proposal, creditors may continue to comply with TILA by providing written disclosures at account-opening for all fees. In proposing to permit creditors to disclose certain costs orally for purposes of TILA, the Board anticipates that creditors will continue to identify fees in the account agreement for contract and other reasons, although the proposal would not require creditors to do so. For example, some creditors identify the types of fees that could be assessed on the account in the account agreement. The Board anticipates that such practices will continue.

Creditors are permitted to provide in electronic form any TILA disclosure that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.* The Board requests comment on whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive electronic disclosures for the account, such as when a consumer seeks to make a payment online, and the creditor imposes a fee for the service.

In technical revisions, the Board proposes to move to proposed § 226.5(a)(1)(ii)(A) the current exemption that disclosures required by § 226.9(d) need not be in writing. (This exemption currently is in footnote 7 under § 226.5(a)(1).) Section 226.9(d) requires disclosure when a finance charge is imposed by a person other than the card issuer at the time of a transaction.

In another technical revision, the substance of footnote 8, regarding disclosures that do not need to be in a retainable form the consumer may keep, is moved to proposed § 226.5(a)(1)(ii)(B).

Electronic communication. In April 2007, the Board issued for public comment a proposal on electronic communication which would withdraw portions of the interim final rules issued in 2001 and to implement certain provisions of the Bankruptcy Act (''2007 Electronic Disclosure Proposal''). *See* 72 FR 21,141; April 30, 2007. Proposed § 226.5(a)(1)(iii) and the proposal to delete current § 226.5(a)(5) is also proposed in the 2007 Electronic Disclosure Proposal. The language in proposed § 226.5(a)(1)(iii) clarifies that creditors may provide open-end disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. 15 U.S.C. 1001, *et seq.* The language also provides that the open-end disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions in the E-Sign Act.

5(a)(2) Terminology

Consistent terminology. Currently, disclosures given pursuant to §§ 226.5a(b), 226.6, and 226.7 must use consistent terminology. *See* current § 226.5a(a)(2)(iv), comment 5a(a)(2)–6, and comment 6–1. The Board proposes to expand this requirement more generally in new § 226.5(a)(2)(i) to include other disclosures required by the open-end provisions of the regulation (Subpart B), such as subsequent disclosures under § 226.9. A new comment 5(a)(2)–4 would clarify that terms do not need to be identical but must be close enough in meaning to enable the consumer to relate the disclosures to one another, which is consistent with current guidance in current comment 5a(a)(2)–6 and current comment 6–1. The Board believes that the use of consistent terminology should be applied to all open-end TILA-required disclosures to allow consumers to better identify the terms across all disclosures.

As discussed above, the Board is proposing to highlight certain information in a tabular format in the account-opening disclosures pursuant to § 226.6(b)(4); on checks that access a credit card account pursuant to § 226.9(b)(3); in change-in-terms notices pursuant to § 226.9(c)(2)(iii)(B); and in disclosures when a rate is increased due to delinquency, default or as a penalty pursuant to § 226.9(g)(3)(ii). These disclosures are meant to be highlighted in a tabular format similar to the table currently required with respect to credit card applications and solicitations under § 226.5a.

Currently, disclosures required for credit card applications and solicitation under § 226.5a must use the term ''grace period'' to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. The Board proposes in new § 226.5(a)(2)(iii) to extend this requirement to use the term ''grace period'' to all references to such a term for the disclosures required to be in the form of a table as discussed above. In addition, proposed § 226.5(a)(2)(iii) provides that if disclosures are required to be presented in a tabular format, the term ''penalty APR'' shall be used to describe an increased rate that may result because of the occurrence of one or more specific events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. For example, creditors would be required to provide information about penalty rates in the table given with credit card applications and solicitations under § 226.5a; in the summary table given at account opening under § 226.6(b)(4); if the penalty rate is changing, in the summary table given on or with the change-in-terms notice under § 226.9(c)(2)(iii)(B), or if a penalty rate is triggered, in the table given under § 226.9(g)(3)(ii).

Requiring card issuers to use a uniform term to describe the grace period and disallowing variants like ''free-ride period'' may improve consumers' understanding of the concept. Similarly, requiring card issuers to use a uniform term to describe the increased rate may improve consumers' understanding of the rate and when it applies. In the consumer testing conducted for the Board, many participants believed the term ''Penalty APR'' as opposed to ''Default APR'' or ''Highest Possible APR'' more clearly conveyed the increased rate. In testing the term ''Default APR,'' some participants said that the word ''default'' indicated to them that it would only apply when the account was closed due to delinquent payments. Some other participants said that the word ''default'' seemed like the ''normal'' rate, not something that occurs because a cardholder does something wrong. Some participants also were confused by the term ''Highest Possible APR;'' one participant, for example, assumed that this was the highest point to which variable rates could increase.

Moreover, if credit insurance or debt cancellation or debt suspension coverage is required as part of the plan and information about that coverage is required to be disclosed in a tabular format, proposed § 226.5(a)(2)(iii) requires that in describing the coverage, the term ''required'' shall be used and the program shall be identified by its name. For example, creditors would be required to provide information about the required coverage in the table given with credit card applications and solicitations under § 226.5a, in the summary table given at account opening under § 226.6(b)(4), and if certain information about the coverage is changing, in the summary table given in change-in-terms notice under § 226.9(c)(2)(iii)(B). In consumer testing conducted for the Board, the Board tested disclosing information about the required debt suspension coverage in the disclosure table given with a mock credit card solicitation. The Board found that describing the coverage by its name allowed participants to link disclosures that were provided in the table to other information about the coverage that was provided elsewhere in the solicitation materials given to the participants.

Furthermore, the Board proposes in § 226.5(a)(2)(iii) that if required to be disclosed in a tabular format, APRs may be described as ''fixed'' or any similar term only if that rate will remain in effect unconditionally until the expiration of a specified time period. If no time period is specified, then the term ''fixed'' or any similar term may not be used unless the rate remains in effect unconditionally until the plan is closed. As further discussed in the section-by-section analysis to proposed § 226.16(g) below, the Board is proposing these rules in order to avoid consumer confusion and the uninformed use of credit.

Terms required to be more conspicuous than others. TILA Section 122(a) requires that the terms ''annual percentage rate'' and ''finance charge'' be disclosed more conspicuously than other terms, data, or information. 15 U.S.C. 1632(a). The Board has implemented this provision in current § 226.5(a)(2)(iii) by requiring that the terms ''finance charge'' and ''annual percentage rate,'' when disclosed with a corresponding amount or percentage rate, be disclosed more conspicuously than any other required disclosure. Under current footnote 9, however, the terms do not need to be more conspicuous when used under §§ 226.5a, 226.7(d), 226.9(e), and 226.16.

In September 2006, the United States Government Accountability Office (GAO) issued a report that analyzed current credit card disclosures and recommended improvements to these disclosures (GAO Report on Credit Card Rates and Fees).[10] The GAO criticized credit card disclosure documents that ''unnecessarily emphasized specific terms.'' *GAO Report on Credit Card Rates and Fees*, p. 43. As an illustration of this point, the GAO reprinted a paragraph of text from a creditor's credit card disclosure documents where the phrase ''periodic finance charge'' was singled out for emphasis each time the phrase was used, even when such term was not disclosed with a corresponding amount or percentage rate. The usability consultant used by the GAO commented that this type of emphasis potentially required readers to work harder to understand the passage's message.

The Board agrees that overemphasis of these terms may make disclosures more difficult for consumers to read. In order to address this problem, the Board considered a proposal to prohibit the terms ''finance charge'' and ''annual percentage rate'' from being disclosed more conspicuously than other required disclosures except when the regulation so requires. However, this proposal could produce unintended consequences. For example, in a change-in-terms notice, the term ''annual percentage rate'' may appear as a heading, and thus be disclosed more conspicuously than other disclosures in the notice even though the term is not disclosed with a rate figure. It appears, therefore, that a rule prohibiting more conspicuous terms in certain cases would need to include detailed safe harbors or exceptions, which might make it unworkable. Therefore, the Board seeks comment on how to address this issue.

Furthermore, the Board is proposing to amend the regulation to expand the list of disclosures where the terms ''finance charge'' and ''annual percentage rate'' need not be more conspicuous to include the account-opening disclosures that would be highlighted under proposed § 226.6(b)(4), the disclosure of the effective APR under proposed § 226.7(b)(7), disclosures on checks that access a credit card account under proposed § 226.9(b)(3), the information on change-in-terms notices that would be highlighted under proposed § 226.9(c)(2)(iii)(B), the disclosures given when a rate is increased due to delinquency, default or as a penalty under proposed § 226.9(g)(3)(ii). Currently, the requirement that the terms ''finance charge'' and ''annual percentage rate'' be more conspicuous than other disclosures does not apply to disclosures highlighted in the tabular format used for credit card application and solicitations under § 226.5a. All of the disclosures discussed above must be highlighted in a tabular format similar to the table required for credit card applications and solicitations under § 226.5a. The Board believes the rule should be consistent across these disclosures. Moreover, the Board believes that the tabular format sufficiently highlights the disclosures, so that the ''more conspicuous'' rule is not needed. Finally, for organizational purposes, the Board proposes to consolidate current § 226.5(a)(2) and current footnote 9 into § 226.5(a)(2)(ii).

5(a)(3) Specific Formats

There are special rules regarding the specific format for disclosures under § 226.5a for credit and charge card applications and solicitations and § 226.5b for home-equity plans, as noted in current § 226.5(a)(3) and current § 226.5(a)(4), respectively. These rules would be consolidated in proposed § 226.5(a)(3), for clarity. In addition, as discussed below, the Board is proposing that certain account-opening disclosures, periodic statement disclosures and subsequent disclosures, such as change-in-terms disclosures, must be provided in specific formats under proposed § 226.6(b)(4); §§ 226.7(b)(6), (b)(7) and (b)(13); and §§ 226.9(b), (c) and (g) and these special format rules are noted in proposed § 226.5(a)(3).

5(b) Time of Disclosures

5(b)(1) Account-opening Disclosures

TILA Section 127(a) requires creditors to provide disclosures ''before opening any account.'' 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished ''before the first transaction is made under the plan,'' which is interpreted as ''before the consumer becomes obligated on the plan.'' Comment 5(b)(1)–1. Also under the existing commentary, creditors may provide the disclosures required by § 226.6 after the first transaction only in limited circumstances. This guidance would be moved from the commentary to the

[10] United States Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, 06–929 (September 2006).

regulation. *See* proposed § 226.5(b)(1)(iii)–(v). In addition, the Board is proposing revisions to the timing rules for disclosing certain costs imposed on an open-end (not home-secured) plan, and in connection with certain transactions conducted by telephone, as discussed below. Additional guidance is proposed on providing timely disclosures when the first transaction is a balance transfer. Technical revisions would change references from ''initial'' disclosures required by § 226.6 to ''account-opening'' disclosures, without any intended substantive change. In today's marketplace, there are few open-end products for which consumers receive the disclosures required under § 226.6 as their ''initial'' Truth in Lending disclosure. *See* §§ 226.5a, 226.5b, which require creditors to provide disclosures before consumers apply for a credit or charge card, or for a HELOC.

5(b)(1)(i) General Rule

Section 226.5(b)(1)(i), as renumbered, would state the general timing rule for furnishing account-opening disclosures. Specifically, creditors generally must provide the account-opening disclosures before the first transaction is made under the plan.

Balance transfers. Creditors commonly extend credit to consumers for the purpose of paying off consumers' existing credit balances with other creditors. Requests for these ''balance transfers'' are often part of an offer to open a credit card account, and consumers may request transfers as part of the application for the new account. Comment 5(b)(1)(i)–5, as renumbered, provides that creditors must provide account-opening disclosures before the balance transfer occurs.

The Board proposes to update this comment to reflect current business practices. Some creditors provide account-opening disclosures, including APRs, along with the balance transfer offer and account application, and these creditors would not be affected by the proposal. Other creditors offer balance transfers for which the APRs that may apply are disclosed as a range, depending on the consumer's creditworthiness. Consumers who respond to such an offer and apply for the transfer later receive account-opening disclosures, including the APR that will apply to the transferred balance. The proposed change would clarify that the creditor must provide disclosures sufficiently in advance of the transfer to allow the consumer to respond to the terms that will apply to the transfer, including to contact the creditor before the balance is transferred and decline the transfer.

Guidance in current comment 5(b)(1)–1 regarding account-opening disclosures provided with cash advance checks would be deleted as unnecessary.

Assessing fees on an account as acceptance of the account. Comment 5(b)(1)(i)–1(i), as renumbered, currently provides that if after receiving the account-opening disclosures, the consumer uses the account, pays a fee or negotiates a cash advance check, the creditor may consider the account not rejected. The comment would be amended to clarify that if the only activity on account is the creditors' assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment. The clarification addresses concerns about some subprime card accounts that assess a large number of fees at account opening. Consumers who have not made purchases or otherwise obtained credit on the account would have an opportunity to review their account-opening disclosures and decide whether to reject the account and decline to pay the fees.

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

Currently, charges imposed on an open-end plan that are a ''finance charge'' or an ''other charge'' must be disclosed before the first transaction. *15* U.S.C. 1637(a); current § 226.5(b)(1) and § 226.6(a) and (b). When a new service (and associated charge) is introduced or an existing charge is increased, creditors must provide a change-in-terms notice to update account-opening disclosures for all accountholders if the new charge is a finance charge or an other charge. *See* current § 226.9(c).

For the reasons discussed in the section-by-section analysis to § 226.6, the Board is proposing revisions to the rules identifying charges required to be disclosed under open-end (not home-secured) plans. The current rule requiring the disclosure of costs before the first transaction (in writing and in a retainable form) would continue to apply to specified costs. *See* proposed § 226.6(b)(4)(iii) for the charges, and § 226.9(c)(2) where such charges are changing or newly introduced. These costs are fees of which consumers should be aware before using the account such as annual or late payment fees, or fees that the creditor would not otherwise have an opportunity to disclose before the fee is triggered, such as a fee for using a cash advance check during the first billing cycle. The Board proposes to except charges imposed as part of an open-end (not home-secured) plan, other than those specified in proposed § 226.6(b)(4)(iii), from the requirement to disclose charges before the first transaction. Creditors would be permitted, at their option, to disclose those charges either before the first transaction or later, though before the cost is imposed. Examples of these charges would be fees to obtain documentary evidence or to expedite payments or delivery of a credit card. Creditors may, of course, continue to disclose any charge imposed as part of an open-end (not home-secured) plan at account opening (or when increased or newly introduced under § 226.9(c)(2)).

The charges covered by the proposed exception are triggered by events or transactions that may take place months, or even years, into the life of the account, when the consumer may not reasonably be expected to recall the amount of the charge from the account-opening disclosure, nor readily to find or obtain a copy of the account-opening disclosure or most recent change-in-term notice. Requiring such charges to be disclosed before account opening may not provide a meaningful benefit to consumers in the form of useful information or protection. Consumers would benefit, however, from a rule that permits creditors to disclose charges when consumers reasonably expect to receive the disclosures, and, thus, are most likely to notice and use the disclosures. The proposal assures that consumers continue to receive disclosure of charges imposed as part of the plan before they become obligated to pay them.

Examples of the charges to which the proposed exception would apply are fees to expedite payments or delivery of a card. Fees to expedite payments or card delivery are now excluded from TILA coverage. In a 2003 rulemaking concerning those two charges, the Board determined that neither was required to be disclosed under TILA. 68 FR 16,185; April 3, 2003. In the supplementary information accompanying the final rule, the Board noted some commenters' views that requiring a written disclosure of a charge for a service long before the consumer might consider purchasing the service did not provide the consumer material benefit. The Board also noted creditors' practice of disclosing the charge when the service is requested, and encouraged them to continue that practice. The Board believes that flexible disclosure of such charges may better serve TILA's purposes than the present exclusion of the charges from TILA's coverage altogether.

The Board also believes the proposed exception may facilitate compliance by creditors. As stated earlier, it can be challenging under the current rule to determine whether charges are a finance charge or an other charge or not covered by TILA, and thus whether advance notice is required if a charge is increased or newly introduced. The proposal reduces these uncertainties and risks. Under the proposal, the creditor could disclose a new or increased charge only to those consumers for whom it is relevant because they are considering at the time of disclosure whether to take the action that would trigger the charge. Moreover, the creditor would not have to determine whether a charge was a finance charge or other charge or not covered by TILA so long as the creditor disclosed the charge, orally or in writing, before the consumer became obligated to pay it, which creditors, in general, already do for business and other legal reasons.

The proposal would allow flexibility in the timing of certain cost disclosures. In proposing to permit creditors to disclose certain charges—orally or in writing—before the fee is imposed, the Board would require creditors to disclose a charge at a time consumers would likely notice the charge when the consumer decides whether to take the action that would trigger the charge, such as purchasing a service. Proposed comment 5(b)(1)(ii)–1 would provide an example that illustrates the standard.

The limited exception to TILA's requirement to disclose charges imposed as part of the plan before the first transaction is proposed pursuant to TILA Section 105(a). Specifically, the Board has authority under TILA Section 105(a) to adopt ''such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' 15 U.S.C. 1604(a). The class of transactions that would be affected is transactions on open-end plans not secured by a dwelling, though only with respect to certain charges. On the basis of the information currently available to the Board, a narrow adjustment and exception appears necessary and proper to effectuate TILA's purpose to assure meaningful disclosure and informed credit use, and to facilitate compliance.

5(b)(1)(iii) Telephone Purchases

Consumers who call a retailer to order goods by telephone commonly use an existing credit card account to finance the purchase. Some retailers, however, offer discounted purchase prices or promotional payment plans to consumers who finance the purchase by establishing a new open-end credit plan with the retailer. Under the current timing rule, retailers must provide TILA account-opening disclosures before the first transaction. This means retailers must delay the shipment of goods until a consumer has received the disclosures. Consumers who want goods shipped immediately may use another credit card to finance the purchase but they lose any discount or promotion that may be associated with opening a new plan. The Board proposes to provide additional flexibility to retailers and consumers for such transactions.

Under proposed § 226.5(b)(1)(iii), retailers that establish an open-end plan in connection with a telephone purchase of goods or services initiated by the consumer may provide account-opening disclosures as soon as reasonably practicable after the first transaction if the retailer (1) permits consumers to return any goods financed under the plan at the time the plan is opened and provides the consumer sufficient time to reject the plan and return the items free of cost after receiving the written disclosures required by § 226.6, and (2) informs the consumer about the return policy as a part of the offer to finance the purchase. Alternatively, the retailer may delay shipping the goods until after the account disclosures have been provided.

Proposed commentary provisions would clarify that creditors may provide disclosures with the goods, or for creditors that have separate distribution systems for credit documents and for goods, by establishing procedures reasonably designed to have the disclosures sent within the same time period after the purchase as when the goods will be sent. A return policy would be of sufficient duration if the consumer is likely to receive the disclosures and have sufficient time to decide about the financing plan. A return policy would include returns via the United States Postal Service for goods delivered by private couriers. The commentary would also clarify that retailers' policies regarding the return of merchandise need not provide a right to return goods if the consumer consumes or damages the goods. The proposal does not affect merchandise purchased after the plan was initially established, or purchased by other means such as a credit card issued by another creditor. *See* proposed comments 5(b)(1)(iii)–1.

5(b)(2) Periodic Statements

TILA Sections 127(b) and 163 provide the timing requirements for providing periodic statements for open-end credit accounts. 15 U.S.C. 1637(b) and 15 U.S.C. 1666b. The Board proposes to retain the existing regulation and commentary, with a few changes discussed below.

5(b)(2)(i)

TILA Section 127(b) establishes that creditors generally must send periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed. Section 226.5(b)(2)(i) provides for a number of exceptions to a creditor's duty to send periodic statements.

De minimis amounts. Creditors need not send periodic statements if an account balance (debit or credit) is $1 or less (and no finance charge is imposed). In the December 2004 ANPR, the Board requested comment on whether the de minimis amount should be adjusted. Q53. Few commented on this issue; there was little support for an adjustment. One major credit card issuer stated that the cost to reprogram systems would exceed the benefit. Thus, the Board proposes to retain the $1 threshold.

Uncollectible accounts. Creditors are not required to send periodic statements on accounts the creditor has deemed ''uncollectible.'' That term is not defined. The Board understands that creditors typically send statements on past-due accounts until the account is charged-off for purposes of loan-loss provisions, which is typically after 180 days of nonpayment. The Board is not proposing regulatory or commentary provisions on when an account is deemed ''uncollectible'' but seeks comment on whether additional guidance would be helpful.

Instituting collection proceedings. Creditors need not send statements if ''delinquency collection proceedings have been instituted.'' Over the years, the Board's staff has been asked for guidance on what actions a creditor must take to be covered by the exception. The Board proposes to add comment 5(b)(2)(i)–3 to clarify that a collection proceeding entails a filing of a court action or other adjudicatory process with a third party, and not merely assigning the debt to a debt collector.

Workout arrangements. Comment 5(b)(2)(i)–2 provides that creditors must continue to comply with all the rules for open-end credit, including sending a periodic statement, when credit privileges end, such as when a consumer stops taking draws and pays off the outstanding balance over time. Another comment provides that ''if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction.'' *See* comment 17(b)–2.

Over the years, the Board's staff has received requests for guidance on the effect of certain work-out arrangements for past-due open-end accounts. For example, a borrower with a delinquent credit card account may agree by telephone to a workout plan to reduce or extinguish the debt and the conversation is later memorialized in a writing. The Board proposes to clarify that creditors entering into workout agreements for delinquent open-end plans without converting the debt to a closed-end transaction comply with the regulation if creditors continue to follow the regulations and procedures under Subpart B during the work-out period. The Board's proposal is intended to provide flexibility and reduce burden and uncertainty. The Board seeks comment on whether further guidance would be helpful, such as by establishing a safe harbor for when an open-end plan is deemed to be satisfied and replaced by a new closed-end obligation.

5(b)(2)(ii)

Credit card issuers commonly offer consumers a ''grace period'' or ''free-ride period'' during which consumers can avoid finance charges on purchases by paying the balance in full. TILA does not require creditors to provide a grace period, but if creditors provide one, TILA Section 163(a) requires them to send statements at least 14 days before the grace period ends. 15 U.S.C. 1666c(a). The rule is a ''mailbox'' rule; that is, the 14-day period runs from the date creditors mail their statements, not from the end of the statement period nor from the date consumers receive their statements.

The Board is aware of anecdotal evidence of consumers receiving statements relatively close to the payment due date, with little time remaining before the payment must be mailed to meet the due date. This may be due to the fact that at the end of a billing cycle, it may take several days for a consumer to receive a statement. In addition, for consumers who mail their payments, they may need to mail their payments several days before the due date to ensure that the payment is receive by the creditor by the due date. Although the Board notes that using the Internet to make payments is increasingly common, the Board requests comment on (1) whether it should recommend to Congress that the 14-day period be increased to a longer time period, so that consumer will have additional time to receive their statements and mail their payments to ensure that payments will be received by the due date, and (2) if so, what time period the Board should recommend to Congress.

5(b)(2)(iii)

In a technical revision, the substance of footnote 10 is moved to the regulatory text.

5(c) Through 5(e)

Sections 226.5(c), (d), and (e) address, respectively: The basis of disclosures and the use of estimates; multiple creditors and multiple consumers; and the effect of subsequent events. The Board does not propose any changes to these provisions, except that the Board proposes to add new comment 5(d)–3, referencing the statutory provisions pertaining to charge cards with plans that allow access to an open-end credit plan maintained by a person other than the charge card issuer. TILA 127(c)(4)(D); 15 U.S.C. 1637(c)(4)(D). (*See* the section-by-section analysis to § 226.5a(f).)

Section 226.5a Credit and Charge Card Applications and Solicitations

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[11] 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in ''take-one'' applications and in catalogs or magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the following: (1) The same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed, or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

The Board proposes a number of substantive and technical revisions to § 226.5a and the accompanying commentary, as described in more detail below. For example, the proposal contains a number of revisions to the format and content of application and solicitation disclosures, to make the disclosures more meaningful and easier to understand. Format changes would affect type size, placement of information within the table, use of cross-references to related information, and use of boldface type for certain key terms. Information concerning penalty APRs and the reasons they may be triggered would be more noticeable, and information would be added about how long penalty APRs may apply. The existing disclosures about how variable rates are determined would be shortened and simplified. Creditors that allocate payments to transferred balances that carry low rates would be required to disclose to consumers that they will pay interest on their (higher rate) purchases until (lower rate) transferred balances are paid in full. Creditors also would be required to include a reference to the Board's Web site where additional information about shopping for credit cards is available.

To address concerns about subprime credit cards programs that have high fees with low credit limits, additional disclosures would be required if the fees or security deposits required to receive the card are 25 percent or more of the minimum credit limit that the consumer may receive. For example, the initial fees on an account with a $250 credit limit may reduce the available credit to less than $100.

Under the proposal, the disclosure of the balance computation method, which now appears in the table, would be required to be outside the table so that the table emphasizes information that is more useful to consumers when they are shopping for a card.

With respect to take-one applications and solicitations, under the proposal, card issuers that provide cost disclosures in take-one applications and solicitations would be required to provide the disclosures in the form of a table, and would no longer be allowed to meet the requirements of § 226.5a by providing a narrative description of account-opening disclosures. This proposed revision is consistent with other revisions contained in the proposal that would require certain account-opening information (such as information about key rates and fees) to be given in the form of a table. *See*

[11] Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this memorandum will refer simply to ''credit cards.''

section-by-section analysis to § 226.6(b)(4).

5a(a) General Rules

Combining disclosures. Currently, comment 5a–2 states that account-opening disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure document meets the requirements of both sections. The Board proposes to retain this comment, but to revise it to account for proposed revisions to § 226.6. Specifically, the Board is proposing to require that certain information given at account opening must be disclosed in the form of a table. *See* proposed § 226.6(b)(4). The account-opening table would be substantially similar to the table required by § 226.5a, but the content required would not be identical. The account-opening table would require information that would not be required in the § 226.5a table, such as a reference to billing error rights. The Board proposes to revise comment 5a–2 to provide that a card issuer may satisfy § 226.5a by providing the account-opening summary table on or with a card application or solicitation, in lieu of the § 226.5a table. For various reasons, card issuers may want to provide the account-opening disclosures with the card application or solicitation. When issuers do so, this comment allows them to provide the account-opening summary table in lieu of the table containing the § 226.5a disclosures.

Clear and conspicuous standard. Section 226.5(a) requires that disclosures made under subpart B (including disclosures required by § 226.5a) must be clear and conspicuous. Currently, comment 5a(a)(2)–1 provides guidance on the clear and conspicuous standard as applied to the § 226.5a disclosures. The Board proposes to provide guidance on applying the clear and conspicuous standard to the § 226.5a disclosures in comment 5(a)(1)–1. Thus, guidance currently in comment 5a(a)(2)–1 would be deleted as unnecessary. The Board proposed to add comment 5a–3 to cross reference the clear and conspicuous guidance in comment 5a(a)(1)–1.

5a(a)(1) Definition of Solicitation

Firm offers of credit. The term ''solicitation'' is defined in § 226.5a(a)(1) of Regulation Z to mean ''an offer by the card issuer to open a credit card account that does not require the consumer to complete an application.'' 15 U.S.C. 1637(c). Board staff has received questions about whether card issuers making ''firm offers of credit'' as defined in the Fair Credit Reporting Act (FCRA) are considered to be making solicitations for purposes of § 226.5a. 15 U.S.C. 1681 *et seq.* The Board proposes to amend the definition of ''solicitation'' to clarify that such ''firm offers of credit'' for credit cards are solicitations for purposes of § 226.5a, as discussed below.

The definition ''solicitation'' was adopted in 1989 to implement part of the Fair Credit and Charge Card Disclosure Act of 1988. It captures situations where an issuer has preapproved a consumer to receive a card, and thus, no application is required. In 1996, the FCRA was amended to allow creditors to use consumer report information in connection with pre-selecting consumers to receive ''firm offers of credit.'' 15 U.S.C. 1681a(l), 1681b(c). A ''firm offer of credit'' is an offer that must be honored by a creditor if a consumer continues to meet the specific criteria used to select the consumer for the offer. 15 U.S.C. 1681a(l). Creditors may obtain additional credit information from consumers, such as income information, when the consumer responds to the offer. However, creditors may decline to extend credit to the consumer based on this additional information only where the consumer does not meet specific criteria established by the creditor before selecting the consumer for the offer. Thus, because consumers who receive ''firm offers of credit'' have been preapproved to receive a credit card and may be turned down for credit only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a ''solicitation,'' even though consumers are asked to provide some additional information in connection with accepting the offer.

Invitations to apply. The Board also proposes to add comment 5a(a)(1)–1 to distinguish solicitations from ''invitations to apply,'' which are not covered by § 226.5a. An ''invitation to apply'' occurs when a card issuer contacts a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invites the consumer to complete an application, but the contact itself does not include an application. The Board believes that these ''invitations to apply'' do not meet the definition of ''solicitation'' because the consumer must still submit an application in order to obtain the offered card. Thus, proposed comment 5a(a)(1)–1 would clarify that this ''invitation to apply'' is not covered by § 226.5a unless the contact itself includes an application form in a direct mailing, electronic communication or ''take one,'' an oral application in a telephone contact initiated by the card issuer, or an application in an in-person contact initiated by the card issuer.

5a(a)(2) Form of Disclosures and Tabular Format

Fees for late payment, over-the-credit-limit, balance transfers and cash advances. Currently, § 226.5a(a)(2)(ii) and comment 5a(a)(2)–5, which implement TILA Section 127(c)(1)(B), provide that card issuers may disclose late payment fees, over-the-credit-limit fees, balance transfer fees, and cash advance fees in the table or outside the table. 15 U.S.C. 1637(c)(1)(B). In the December 2004 ANPR, the Board requested comment on whether these fees should be required to be in the table. Q8. Many commenters indicated that the Board should require these fees to be in the table, because these are core fees, and uniformity in the placement of the fees would make the disclosures more familiar and predictable for consumers. Some commenters, however, urged the Board to retain the flexibility for card issuers to place the fee disclosures either in the table or immediately outside the table.

The Board proposes to require that these fees be disclosed in the table. In the consumer testing conducted for the Board, participants consistently identified these fees as among the most important pieces of information they consider as part of the credit card offer. With respect to the disclosure of these fees, the Board tested placement of these fees in the table and immediately below the table. Participants who were shown forms where the fees were disclosed below the table tended not to notice these fees compared to participants who were shown forms where the fees were presented in the table. The Board proposes to amend § 226.5a(a)(2)(i) to require these fees to be disclosed in the table, so that consumers can easily identify them. Current § 226.5a(a)(2)(ii) and comment 5a(a)(2)–5, which currently allow issuers to place the fees outside the table, would be deleted. These proposed revisions are based in part on TILA Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures. 15 U.S.C. 1637(c)(5).

Highlighting APRs and fee amounts in the table. Section 226.5a generally requires that certain information about rates and fees applicable to the card offer be disclosed to the consumer in card applications and solicitations. This information includes not only the annual percentage rates and fee amounts that will apply, but also explanatory information that gives context to these figures. The Board seeks to enable consumers to identify easily the rates and fees disclosed in the table. Thus, the Board proposes to add § 226.5a(a)(2)(iv) to require that when a tabular format is required, issuers must disclose in bold text any APRs required to be disclosed, any discounted initial rate permitted to be disclosed, and any fee amounts or percentages required to be disclosed, except for any maximum limits on fee amounts disclosed in the table. Proposed Samples G–10(B) and G–10(C) provide guidance on how to show the rates and fees described in bold text. Proposed Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the percentages and fees described above in a clear and conspicuous manner, by including these percentages and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically. In consumer testing conducted for the Board, participants who saw a table with the APRs and fees in bold and generally before any text in the table were more likely to identify the APRs and fees quickly and accurately than participants who saw other forms in which the APRs and fees were not highlighted in such a fashion.

Electronic applications and solicitations. Section 1304 of the Bankruptcy Act amends TILA Section 127(c) to require solicitations to open a card account using the Internet or other interactive computer service to contain the same disclosures as those made for applications or solicitations sent by direct mail. Regarding format, the Bankruptcy Act specifies that disclosures provided using the Internet or other interactive computer service must be ''readily accessible to consumers in close proximity'' to the solicitation. 15 U.S.C. 1637(c)(7).

In September 2000, the Board revised § 226.5a, and as part of these revisions, provided guidance on how card issuers using electronic disclosures may comply with the § 226.5a requirement that certain disclosures be ''prominently located'' on or with the application or solicitation. 65 FR 58,903; October 3, 2000. In March 2001, the Board issued interim final rules, which are not mandatory, containing additional guidance for the electronic delivery of disclosures under Regulation Z, consistent with the requirements of the E-Sign Act. 66 FR 17,329; March 30, 2001. As discussed above, in April 2007, the Board issued for public comment the 2007 Electronic Disclosure Proposal. *See* section-by-section analysis to § 226.5(a)(1).

The Bankruptcy Act provision applies to solicitations to open a card account ''using the Internet or other interactive computer service.'' The term ''Internet'' is defined as the international computer network of both Federal and non-Federal interoperable packet-switched data networks. The term ''interactive computer service'' is defined as any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 15 U.S.C. 1637(c)(7). Based on the definitions of ''Internet'' and ''interactive computer service,'' the Board believes that Congress intended to cover card offers that are provided to consumers in electronic form, such as via e-mail or an Internet Web site.

In addition, although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), the Board requested comment in the October 2005 ANPR on whether the provision should be interpreted also to include applications. Q93. Almost all commenters on this issue stated that there is no reason to treat electronic applications differently from electronic solicitations. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for credit to receive accurate cost information before submitting an electronic application or responding to an electronic solicitation. The Board proposes to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications to promote the informed use of credit and avoid circumvention of TILA. 15 U.S.C. 1601(a), 1604(a). Thus, in implementing the Bankruptcy Act provision, the Board proposes to amend § 226.5a(c) to require that applications and solicitations that are provided in electronic form contain the same disclosures as applications and solicitations sent by direct mail. The same proposal is included in the Board's 2007 Electronic Disclosure Proposal.

With respect to the form of disclosures required under § 226.5a, the Board proposes to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit card in electronic form, the disclosures required on or with an application or solicitation for a credit card must be provided to the consumer in electronic form on or with the application or solicitation. A consumer accesses an application or solicitation in electronic form when, for example, the consumer views the application or solicitation on his or her personal computer. On the other hand, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located. *See* proposed comment 5a(a)(2)–6. The same proposal is included in the Board's 2007 Electronic Disclosure Proposal. *See* § 226.5a(a)(2)(v) and comment 5a(a)(2)–9 in the 2007 Electronic Disclosure Proposal.

The Board also proposes to revise existing comment 5a(a)(2)–8 added by the 2001 interim final rule, which states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. The Board proposes to revise this comment to describe alternative methods for presenting electronic disclosures. This comment is intended to provide examples of the methods rather than an exhaustive list. The same proposal was included in the Board's 2007 Electronic Disclosure Proposal.

The Board also proposes to provide guidance on a Bankruptcy Act provision requiring that the § 226.5a disclosures must be ''readily accessible to consumers in close proximity'' to an application or solicitation that is made electronically. In the October 2005 ANPR, the Board asked whether additional or different guidance is needed from the guidance previously issued by the Board in 2000 regarding how card issuers using electronic disclosures may comply with the § 226.5a requirement that certain disclosures be ''prominently located'' on or with the application or solicitation. Q95.

In particular, the 2000 guidance states that the disclosures required by § 226.5a must be prominently located on or with electronic applications and solicitations. 65 FR 58,903; October 3, 2000. The guidance provides flexibility for satisfying this requirement. For example, a card issuer could provide on the application or reply form a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures is not used, the electronic application or reply form could clearly and conspicuously indicate where the fact that rate, fee or other cost information could be found. Or the disclosures could automatically appear on the screen when the application or reply form appears. (*See* current comment 5a(a)(2)–2, which would be renumbered as 5a(a)(2)–1 under the proposal.)

Most commenters stated that the Board should retain this existing guidance to interpret the ''close proximity'' standard. A few industry commenters stated that the existing guidance should not apply, and that, for example, it should suffice to provide a link to the disclosures that the consumer could choose to access or not. Some commenters urged the Board generally to allow maximum flexibility to creditors regarding the display of electronic disclosures, and stated that no guidance or specific rules were necessary.

The Board proposes to revise the existing guidance to interpret the ''close proximity'' standard. The existing guidance would be revised to be consistent with proposed changes to comment 5a(a)(2)–8, that provides guidance to issuers on providing access to electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. Specifically, the Board proposes to provide that electronic disclosures are deemed to be closely proximate to an application or solicitation if, for example, (1) they automatically appear on the screen when the application or reply form appears, (2) they are located on the same Web ''page'' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable, or (3) they are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form. *See* proposed comment 5a(a)(2)–1.ii.

The Board proposes to retain the requirement that if an electronic link to the disclosures is used, the consumer must not be able to bypass the link before submitting an application or a reply form. The Board believes that the ''close proximity'' standard is designed to ensure that the disclosures are easily noticeable to consumers, and this standard is not met when consumers are only given a link to the disclosures, but not to the disclosures themselves. The Board proposes to incorporate the ''close proximity'' standard for electronic applications and solicitations in § 226.5a(a)(2)(vi)(B), and the guidance regarding the location of the § 226.5a disclosures in electronic applications and solicitations in comment 5a(a)(2)–1.ii.

Terminology. Section 226.5a currently requires terminology in describing the disclosures required by § 226.5a must be consistent with terminology describing the account-opening disclosures (§ 226.6) and for the periodic statement disclosures (§ 226.7). TILA and § 226.5a also require that the term ''grace period'' be used to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). The Board proposes that all guidance for terminology requirements with respect to § 226.5a disclosures be placed in proposed § 226.5(a)(2)(iii). The Board proposes to add comment 5a(a)(2)–7 to cross-reference the guidance in § 226.5(a)(2).

5a(a)(4) Certain Fees That Vary by State

Currently, under § 226.5a, if the amount of a late-payment fee, over-the-credit-limit fee, cash advance fee or balance transfer fee varies from state to state, a card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state. *See* existing § 226.5a(a)(5), renumbered as new § 226.5a(a)(4). As discussed below, the Board proposes to require card issuers to disclose in the table any fee imposed when a payment is returned. *See* proposed § 226.5a(b)(12). The Board proposes to amend new § 226.5a(a)(4) to add returned payment fees to the list of fees for which an issuer may disclose a range of fees. The Board requests comment on whether other fees required to be disclosed under § 226.5a should be added to the list of fees for which the issuer may disclose a range of fees, such as fees for required insurance or debt cancellation or suspension coverage under proposed § 226.5a(b)(14).

5a(a)(5) Exceptions

Section 226.5a currently contains several exceptions to the disclosure requirements. Some of these exceptions are in the regulation itself, while others are contained in the commentary. For clarity, all exceptions would be placed together in new § 226.5a(a)(5), as indicated in the redesignation table below.

5a(b) Required Disclosures

Section 226.5a(b) specifies the disclosures that are required to be included on or with certain applications and solicitations.

5a(b)(1) Annual Percentage Rate

Section 226.5a requires card issuers to disclose the rates applicable to the account, such as rates applicable to purchases, cash advances, and balance transfers. 15 U.S.C. 1637(c)(1)(A)(i)(I).

16-point font for disclosure of purchase APRs. Currently, under § 226.5a(b)(1), the purchase rate must be disclosed in the table in at least 18-point font. This font requirement does not apply to (1) a temporary initial rate for purchases that is lower than the rate that will apply after the temporary rate expires; or (2) a penalty rate that will apply upon the occurrence of one or more specified events. In response to the December 2004 ANPR, several industry commenters suggested that the Board delete this 18-point font requirement. These commenters indicated that disclosing the purchase rate in 18-point font size might distract consumers from other important terms being disclosed, and that disclosing the purchase rate in the table in large font size is not necessary because simply disclosing the purchase rate in the table provides consumers meaningful and comparable disclosure of that term.

The Board is proposing to reduce the 18-point font requirement to a 16-point font. The purchase rate is one of the most important terms disclosed in the table, and it is essential that consumers be able to identify that rate easily. A 16-point font size requirement for the purchase APR appears to be sufficient to highlight the purchase APR. (The Board is proposing that other disclosures in the table are required to be in 10-point type. *See* proposed comment 5(a)(1)–3.) In consumer testing conducted for the Board, versions of the table in which the purchase rate was the same font as other rates included in the table were reviewed. In other versions, the purchase rate was in 16-point type while other disclosures were in 10-point type. Participants tended to notice the purchase rate more often when it was in a font bigger than the font used for other rates. Nonetheless, there was no evidence from consumer testing that it was necessary to use a font size of 18-point in order for the purchase APR to be noticeable to participants. Given that the proposal is requiring a minimum of 10-point type for the disclosure of other terms in the table, based on document design principles, the Board believes that a 16-point font size for the purchase

APR would be effective in highlighting the purchase APR in the table.

Periodic rate. Currently, comment 5a(b)(1)–1 allows card issuers to disclose the periodic rate in the table in addition to the required disclosure of the corresponding APR. The Board proposes to delete comment 5a(b)(1)–1, and thus, prohibit disclosure of the periodic rate in the table. Based on consumer testing conducted for the Board, consumers do not appear to shop using the periodic rate, nor is it clear that this information is important to understanding a credit card offer. Allowing the periodic rate to be disclosed in the table may distract from more important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that appears in the table, the Board proposes to prohibit disclosure of the periodic rate in the table. Nonetheless, card issuers may disclose this information outside of the table.

Variable rate information. Section 226.5a(b)(1)(i), which implements TILA Section 127(c)(1)(A)(i)(II), currently requires for variable-rate accounts, that the card issuer must disclose the fact that the rate may vary and how the rate is determined. 15 U.S.C. 1637(c)(1)(A)(i)(II). In disclosing how the applicable rate will be determined, the card issuer is required to provide the index or formula used and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table. *See* current comment 5a(b)(1)–3.

1. *Index and margins.* Currently, the variable rate information is required to be disclosed separately from the applicable APR, in a row of the table with the heading ''Variable Rate Information.'' Some card issuers will include the phrase ''variable rate'' with the disclosure of the applicable APR and include the details about the index and margin under the ''Variable Rate Information'' heading. In the consumer testing conducted for the Board, many participants who saw the variable rate information presented as described above understood that the label ''variable'' meant that a rate could change, but could not locate information on the tested form regarding how or why these rates could change. This was true even if the index and margin information was taken out of the row of the table with the heading ''Variable Rate Information'' and placed in a footnote to the phrase ''variable rate.'' Many participants who did find the variable rate information were confused by the variable-rate margins, often interpreting them erroneously as the actual rate being charged. In addition, very few participants indicated that they would use the margins in shopping for a credit card account.

Accordingly, the Board proposes to amend § 226.5a(b)(1)(i) to specify that issuers may not disclose the amount of the index or margins in the table. Specifically, card issuers would not be allowed to disclose in the table the current value of the index (for example, that the prime rate currently is 7.5 percent) or the amount of the margin that is used to calculate the variable rate. Card issuers would be allowed to indicate only that the rate varies and the type of index used to determine the rate (such as the ''prime rate,'' for example.) In describing the type of index, the issuer may not include details about the index in the table. For example, if the issuer uses a prime rate, the issuer must just describe the rate as tied to a ''prime rate'' and may not disclose in the table that the prime rate used is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. *See* proposed comment 5a(b)(1)–2. Also, the Board would require that the disclosure about a variable rate (the fact that the rate varies and the type of index used to determine the rate) must be disclosed with the applicable APRs, so that consumers can more easily locate this information. *See* proposed Model Form G–10(A), Samples G–10(B) and G–10(C). Proposed Samples G–10(B) and G–10(C) provide guidance to issuers on how to disclose the fact that the applicable rate varies and how it is determined.

2. *Rate floors and ceilings.* Currently, card issuers may disclose in the table, at their option, any limitations on how high (i.e., a rate ceiling) or low (i.e., a rate floor) a particular rate may go. For example, assume that the purchase rate on an account could not go below 12 percent or above 24 percent. An issuer would be required to disclose in the table the current rate offered on the credit card (for example, 18 percent), and would be permitted to disclose in the table that the rate would not go below 12 percent and above 24 percent. *See* current comment 5a(b)(1)–4. The Board proposes to revise the commentary to prohibit the disclosure of the rate floors and ceilings in the table. Based on consumer testing conducted for the Board, consumers do not appear to shop based on these rate floors and ceilings, and allowing them to be disclosed in the table may distract from more important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that may appear in the table, the Board proposes to prohibit disclosure of the rate floors and ceilings in the table. Nonetheless, card issuers may disclose this information outside of the table.

Discounted initial rates. Currently, comment 5a(b)(1)–5 specifies that if the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, a card issuer must disclose the rate that will otherwise apply to the account. A discounted initial rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect. The Board proposes to move comment 5a(b)(1)–5 to new § 226.5a(b)(1)(ii). The Board also proposes to add new comment 5a(b)(1)–3 to specify that if a card issuer discloses the discounted initial rate and expiration date in the table, the issuer is deemed to comply with the standard to provide this information clearly and conspicuously if the issuer uses the format specified in proposed Samples G–10(B) and G–10(C) to present this information.

In addition, under TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act, the term ''introductory'' must be used in immediate proximity to each listing of a discounted initial rate in the application, solicitation, or promotional materials accompanying such application or solicitation. Thus, the Board proposes to revise new § 226.5a(b)(1)(ii) to specify that if an issuer provides a discounted initial rate in the table along with the rate required to be disclosed, the card issuer must use the term ''introductory'' in immediate proximity to the listing of the initial discounted rate.

In the October 2005 ANPR, commenters asked the Board to consider permitting creditors to use the term ''intro'' as an alternative to the word ''introductory.'' Because ''intro'' is a commonly understood abbreviation of the term ''introductory,'' and consumer testing indicates that consumers understand this term, the Board proposes to allow creditors to use ''intro'' as an alternative to the requirement to use the term ''introductory'' and is proposing to clarify this approach in new § 226.5a(b)(1)(ii). Also, to give card issuers guidance on the meaning of ''immediate proximity,'' the Board is proposing to provide guidance for creditors that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the discounted initial rate. This guidance is set forth in proposed comment 5a(b)(1)–3. The Board believes that interpreting ''immediate proximity'' to mean adjacent to the rate may be too restrictive. Moreover, the Board has proposed the ''within the same phrase'' standard as a safe harbor instead of requiring this placement, recognizing that even if the term ''introductory'' is not ''within the same phrase'' as the rate it may still meet the ''immediate proximity'' standard.

Penalty rates. Currently, comment 5a(b)(1)–7 requires that if a rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased penalty rate that may apply and the specific event or events that may result in the increased rate. If a tabular format is required, the issuer must disclose the penalty rate in the table under the heading ''Other APRs,'' along with any balance transfer or cash advance rates.

The specific event or events must be described outside the table with an asterisk or other means to direct the consumer to the additional information. At its option, the issuer may include outside the table with the explanation of the penalty rate the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed if credit privileges are permanently terminated.

In the December 2004 ANPR, the Board solicited comment on whether the table was effective as currently designed. Q7. In response to this question, many commenters suggested that the specific event or events that may result in the penalty rate should be disclosed in the table along with the penalty rate, because this would enhance comparison shopping and consumer understanding by highlighting penalty pricing and its effect on the other rates for the account.

In the consumer testing conducted for the Board, when reviewing forms in which the specific events that trigger the penalty rate were disclosed outside the table, many participants did not readily notice the penalty rate triggers when they initially read through the document or when asked follow-up questions. In addition, many participants did not readily notice the penalty rate when it was included in the row ''Other APRs'' along with other rates. The GAO also found that consumers had difficulty identifying the default rate and circumstances that would trigger rate increases. *See GAO Report on Credit Card Rates and Fees*, at page 49. In the testing conducted for the Board, when the penalty rate was placed in a separate row in the table, participants tended to notice the rate more often. Moreover, participants tended to notice the specific events that result in the penalty rate more often when these events were included with the penalty rate in a single row in the table. For example, two types of forms related to placement of the events that could trigger the penalty rate were tested—several versions showed the penalty rate in one row of the table and the description of the events that could trigger the penalty rate in another row of the table. Several other versions showed the penalty rate and the triggering events in the same row. Participants who saw the versions of the table with the penalty rate in a separate row from the description of the triggering events tended to skip over the row that specified the triggering events when reading the table. Nonetheless, participants who saw the versions of the table in which the penalty rate and the triggering events were in the same row tended to notice the triggering events when they reviewed the table.

As a result, the Board proposes to add § 226.5a(b)(1)(iv) and amend new comment 5a(b)(1)–4 (previously comment 5a(b)(1)–7) to require card issuers to briefly disclose in the table the specific event or events that may result in the penalty rate. In addition, the Board is proposing that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. *See* proposed Model Form G–10(A). In describing the specific event or events that may result in an increased rate, new comment 5a(b)(1)–4 provides that the descriptions of the triggering events in the table should be brief. For example, if an issuer may increase a rate to the penalty rate if the consumer does not make the minimum payment by 5 p.m., Eastern time, on its payment due date, the issuer should describe this circumstance in the table as ''make a late payment.'' Proposed Samples G–10(B) and G–10(C) provide additional guidance on the level of detail that issuers should use in describing the specific events that result in the penalty rate.

The Board also proposes to specify in new § 226.5a(b)(1)(iv) that in disclosing a penalty rate, a card issuer also must specify the balances to which the increased rate will apply. Typically, card issuers apply the increased rate to all balances on the account. The Board believes that this information helps consumers better understand the consequences of triggering the penalty rate.

In addition, the Board proposes to specify in new § 226.5a(b)(1)(iv) that in disclosing the penalty rate, a card issuer must describe how long the increased rate will apply. Proposed comment 5a(b)(1)–4 provides that in describing how long the increased rate will remain in effect, the description should be brief, and refers issuers to Samples G–10(B) and G–10(C) for guidance on the level of detail that issuer should use to describe how long the increased rate will remain in effect. Also, proposed comment 5a(b)(1)–4 provides that if a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. The Board believes that this information may help consumers better understand the consequences of triggering the penalty rate.

Also, the Board proposes to add language to new § 226.5a(b)(1)(iv) to specify that in disclosing a penalty rate, card issuers must include a brief description of the circumstances under which any discounted initial rates may be revoked and the rate that will apply after the discounted initial rate is revoked. Section 1303(a) of the Bankruptcy Act requires that a credit card application or solicitation must contain in a prominent location on or with the application or solicitation a clear and conspicuous disclosure of a general description of the circumstances that may result in revocation of a discounted initial rate offered with the card, and the rate that will apply after the discounted initial rate is revoked. 15 U.S.C. 1637(c)(6)(C). The Board is proposing that this information be disclosed in the table along with other penalty rate information. Often, the same events that trigger a loss of a discounted initial rate and an increase to the penalty rate also trigger an increase in other rates on the account.

Rates that depend on consumers' creditworthiness. Credit card issuers often engage in risk-based pricing such that the rates offered on a credit card will depend on later determinations of a consumer's creditworthiness. For example, an issuer may use information collected in a consumer's application or solicitation reply form (e.g., income information) or obtained through a credit report from a consumer reporting agency to determine the rate for which a consumer qualifies. For preapproved solicitations, issuers that engage in risk-based pricing typically will disclose the specific rates offered to the consumer, because for these offers, issuers typically will have some indication of a consumer's creditworthiness based on the prescreening process done through a consumer reporting agency. For applications not involving prescreens, however, issuers that use risk-based pricing may not be able to disclose the specific rate that would apply to a consumer, because issuers may not have sufficient information about a consumer's creditworthiness at the time the application is given.

In response to the December 2004 ANPR, industry commenters asked for guidance on how rates should be disclosed under § 226.5a when an issuer does not know the specific rate for which the consumer will qualify at the time the disclosures are made because the specific rate depends on a later determination of the consumer's creditworthiness. Some industry commenters asked the Board to clarify that issuers may disclose the range of possible rates, with an explanation that the rate obtained by the consumer is based on the consumer's creditworthiness. Another industry commenter suggested that the Board should allow issuers to disclose a recent APR or the median rate within the range of possible rates, with an explanation that the rate could be higher or lower depending on the consumer's creditworthiness. Several consumer group commenters suggested that the Board should not allow issuers to disclose a range of possible rates. Instead, issuers should be required to disclose the actual APR that the creditor is offering, because otherwise, consumers do not know the rate for which they are applying.

The Board proposes to add § 226.5(b)(1)(v) and comment 5a(b)(1)–5 to clarify that in circumstances in which an issuer cannot state a single specific rate being offered at the time disclosures are given because the rate will depend on a later determination of the consumer's creditworthiness, issuers must disclose the possible rates that might apply, and a statement that the rate for which the consumer may qualify at account opening depends on the consumer's creditworthiness. A card issuer may disclose the possible rates as either specific rates or a range of rates. For example, if there are three possible rates that may apply (e.g., 9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). Proposed Samples G–10(B) and G–10(C) provide guidance for issuers on how to meet these requirements. In addition, the Board solicits comment on whether card issuer should alternatively be permitted to list only the highest possible rate that may apply instead of a range of rates (e.g., up to 17.99 percent).

As discussed above, one industry commenter suggested that the Board should allow issuers to disclose a recent APR or the median rate within the range of possible rates, with an explanation that the APR could be higher or lower depending on the consumer's creditworthiness. The Board believes that requiring card issuers to disclose all the possible rates (as either specific rates, or as a range of rates) provides more useful information to consumers than allowing issuers to disclose a median APR within the range. If only one rate is disclosed in the table, consumers may mistake the rate disclosed as the specific rate offered on the account, and not understand that it is a median rate within a certain range, even if there is an explanation that the rate could be higher or lower. If a consumer sees a range or several specific rates, the consumer may be better able to determine that more than one rate is being disclosed.

Transactions with both rate and fee. When a consumer initiates a balance transfer or cash advance, card issuers typically charge consumers both interest on the outstanding balance of the transaction, and a fee to complete the transaction. It is important that consumers understand when both a rate and a fee apply to specific transactions. In the consumer testing conducted for the Board, several ways of presenting rate and fee information were reviewed. In some tests, the cash advance and balance transfer rates were included in a section with other rates, and cash advance and balance transfer fees were included in a section with other fees. In other tests, cash advance and balance transfer fees were not included with other fees, but instead were included with the cash advance and balance transfer rates. Participants in the first test (the one where balance transfer and cash advance fees were grouped with other fees) were more likely to notice the balance transfer and cash advance fees than participants in the other tests. Participants tended to notice rates more easily when they were grouped together, and fees more easily when they are grouped together. Thus, the Board is proposing to group APRs together in the table and fees together in the table, rather than grouping APRs and fees related to cash advances together and APRs and fees related to balance transfers together.

Nonetheless, because the rates and the fees related to cash advances and balance transfers are not grouped together, a cross reference from the cash advance and balance transfer rates to the applicable fees may help consumers notice both the rate and the fee. In consumer testing conducted for the Board, some participants were more aware that an interest rate applies to cash advances and balance transfers than they were aware of the fee component, so a cross reference between the rate and the fee may help those consumers notice both the rate and the fee components. Therefore, the Board proposes to add new § 226.5a(b)(1)(vi) to require that if a rate and fee both apply to a balance transfer or cash advance transaction, a card issuer must disclose that a fee also applies when disclosing the rate, and a cross-reference to the fee. 15 U.S.C. 1637(c)(5).

Typical APR. In response to the December 2004 ANPR, several consumer groups indicated that the current disclosure requirements in § 226.5a allow card issuers to promote low APRs, that include interest but not fees, while charging high penalty fees and penalty rates when consumers, for example, pay late or exceed the credit limit. As a result, these consumer groups suggested that the Board require credit card issuers to disclose in the table a ''typical rate'' that would include fees and charges that consumers pay for a particular open-end credit products. This rate would be calculated as the average effective rate disclosed on periodic statements over the last three years for customers with the same or similar credit card product. These consumer groups believe that this ''typical rate'' would reflect the real rate that consumers pay for the credit card product.

The Board is not proposing that card issuers disclose the ''typical rate'' as part of the § 226.5a disclosures. Although a single cost figure (like the APR on closed-end credit) is a laudable objective, the Board does not believe that the proposed typical APR would be helpful to consumers that seek credit cards. There are many different ways consumers may use their credit cards, such as the features they use, what fees they incur, and whether a balance is carried from month to month. For example, some consumers use their cards only for purchases, always pay off the bill in full, and never pay fees. Other consumers may use their cards for purchases, balance transfers or cash advances, but never pay late-payment fees, over-the-credit-limit fees or other penalty fees. Still others may pay penalty fees and incur penalty rates. A ''typical rate,'' however, would be based on average fees and average balances that may not be typical for many consumers. Moreover, such a rate may confuse consumers about the actual rate that may apply to their account.

Nonetheless, the Board believes it is important that consumers understand the penalty rates and penalty fees that apply to a credit card account. Thus, the Board is proposing to make penalty rates more prominent in the table and require card issuers to describe in the table the reasons why a penalty rate may apply and how long the penalty rate will apply. *See* proposed § 226.5a(b)(1)(iv). Likewise, the Board is proposing to highlight penalty fees by requiring that late payment fees, over-the-credit-limit fees, and returned-payment fees be disclosed in the table. *See* proposed § 226.5a(a)(2)(i).

5a(b)(2) Fees for Issuance or Availability

Section 226.5a(b)(2), which implements TILA Section 127(c)(1)(A)(ii)(I), requires card issuers to disclose any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity. 15 U.S.C. 1637(c)(1)(A)(ii)(I). In 1989, the Board used its authority under TILA Section 127(c)(5) to require that issuers also disclose non-periodic fees related to opening the account, such as one-time membership or participation fees. 15 U.S.C. 1637(c)(5); 54 FR 13,855, April 6, 1989.

Fees for issuance or availability of credit card products targeted to subprime borrowers. Often, subprime credit cards will have substantial fees related to the issuance and availability of credit. For example, these cards may impose an annual fee, and a monthly maintenance fee for the card. In addition, these cards may impose multiple one-time fees when the consumer opens the card account, such as an application fee and a program fee. The Board believes that these fees should be clearly explained to consumers at the time of the offer so that consumers better understand when these fees will be imposed.

The Board proposes to amend § 226.5a(b)(2) to require additional information about periodic fees. 15 U.S.C. 1637(c)(5). Currently, issuers are required to disclose only the annualized amount of the fee. The Board proposes to amend § 226.5a(b)(2) to require issuers also to disclose the amount of the periodic fee, and how frequently it will be imposed. For example, if an issuer imposes a $10 monthly maintenance fee for a card, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis.

In addition, the Board proposes to amend § 226.5a(b)(2) to require additional information about non-periodic fees related to opening the account. Currently, issuers are required to disclose the amount of the non-periodic fee, but not that it is a one-time fee. The Board proposes to amend § 226.5a(b)(2) to require card issuers to disclose the amount of the fee and that it is a one-time fee. This additional information will allow consumers to better understand set-up and maintenance fees that are often imposed in connection with subprime credit cards. For example, the proposed changes would provide consumers with additional information about when the fees will be imposed by identifying which fees are one-time fees, which fees are periodic fees (such as monthly fees), and which fees are annual fees.

In addition, application fees that are charged regardless of whether the consumer receives credit currently are not considered fees as imposed for the issuance or availability of a credit card, and thus are not disclosed in the table. *See* current comment 5a(b)(2)–3 and § 226.4(c)(1). The Board proposes to delete the exception for these application fees and require that they be disclosed in the table as fees imposed for the issuance or availability of a credit card. The Board believes that consumers should be aware of these fees when they are shopping for a credit card.

5a(b)(3) Minimum Finance Charge

Currently, § 226.5a(b)(3), which implements TILA Section 127(c)(1)(A)(ii)(II), requires that card issuers must disclose any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers typically impose a minimum charge (e.g., $.50) in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge (a so-called ''minimum interest charge''). In response to the December 2004 ANPR, one industry commenter suggested that the Board no longer require that the minimum finance charge be disclosed in the table because these fees are typically small (e.g., $.50) and consumers do not shop on them. Another industry commenter suggested that the Board only require that the minimum finance charge be included in the table if the charge is a significant amount. On the other hand, several consumer groups urged the Board to continue to include the minimum finance charge in the table because this charge can have a significant effect on the cost of credit.

The Board proposes to retain the minimum finance charge disclosure in the table. Although minimum charges currently may be small, card issuers may increase these charges in the future. Also, Board is aware of at least one credit card product for which no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (for example, $6 charge per $1,000 balance). If the minimum finance charge disclosure was eliminated from the table, card issuers that offer this type of pricing would no longer be required to disclose the fixed charge in the table. The Board is not proposing to require the minimum finance charge only if it is a significant amount. This approach could undercut the uniformity of the table, and could be misleading to consumers. If consumers do not see a minimum finance charge disclosed in the table, the Board is concerned that most consumers might assume that there is not a minimum finance charge on the card, when the charge was below a certain threshold.

Under § 226.5a(b)(3), card issuers are only required to disclose the amount of any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers currently are not required to provide a description of when this charge may be imposed. In consumer testing conducted for the Board, model forms were tested that only included the amount of the minimum interest charge in the table. In viewing these forms, some participants misunderstood that they would pay the minimum interest charge every month, not just those months where they otherwise would incur interest that was less than the minimum charge. Thus, the Board proposes to amend § 226.5a(b)(3) to require card issuers to disclose in the table a brief description of the minimum finance charge, to give consumers context for when this charge will be imposed. 15 U.S.C. 1637(c)(5). Proposed Samples G–10(B) and G–10(C) provide guidance regarding how to disclose a minimum interest charge.

5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. The current commentary to this provision clarifies that only transaction fees on purchases imposed by the issuer must be disclosed. (*See* comment 5a(b)(4)–1.) For clarity, the Board would amend § 226.5a(b)(4) to incorporate this commentary provision.

In addition, the Board proposes to amend § 226.5a(b)(4) to specify that fees charged for transactions in a foreign currency or that take place in a foreign country may not be disclosed in the table. In an effort to streamline the contents of the table, the Board proposes to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board, participants did not tend to mention foreign transaction fees as important fees they use to shop. There are few consumers who may pay these fees with any frequency. Thus, the Board proposes to except foreign transaction fees from disclosure of transaction fees. The Board proposes to include foreign transaction fees in the account-opening summary table that is required under § 226.6(b)(4), so that interested consumers can learn of the fees before using the card.

5a(b)(5) Grace Period

Section 226.5a(b)(5), which implements TILA Section 127(c)(A)(iii)(I), requires that card issuers disclose in the table the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. Comment 5a(b)(5)–1 provides that a card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).''

The consumer testing conducted for the Board indicated that some participants misunderstood the word ''grace period'' to mean the time after the payment due date that an issuer may give the consumer to pay the bill without charging a late-payment fee. The GAO found similar misunderstandings by consumers in its consumer testing. Furthermore, many participants in the GAO testing incorrectly indicated that the grace period was the period of time promotional interest rates applied. *See GAO Report on Credit Card Rates and Fees*, at page 50.

In consumer testing conducted for the Board, participants tended to understand the grace period more clearly when additional context was added, such as describing that if the consumer paid the bill in full each month, the consumer would have some period of time (e.g., 25 days) to pay the new purchase balance in full to avoid interest. Thus, the Board proposes to amend § 226.5a(b)(5) to require card issuers to disclose briefly any conditions on the applicability of the grace period. 15 U.S.C. 1637(c)(5). The Board also proposes to amend comment 5a(b)(5)–1 to provide guidance for how issuers may meet the requirements in proposed § 226.5a(b)(5).

5a(b)(6) Balance Computation Method

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, § 226.5a(b)(6) requires that issuers must disclose the name of that balance computation method in the table as part of the disclosures required by § 226.5a, and issuers are not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6); § 226.5a(a)(2)(i).

In response to the December 2004 ANPR, several commenters suggested that the Board delete the description of the balance computation method from the table. These commenters believed that the implications of the balance computation method on the actual cost of credit are simply too complex and too contingent on future purchasing patterns to be of any use to consumers in shopping for credit.

The Board agrees that balance computation methods are too complex to explain in a simple fashion in the table. Most card issuers use one of two methods—either the ''average daily balance method (including new purchases)'' or the ''two-cycle average daily balance method (including new purchases).'' For consumers that carry a balance on their credit card every month or for consumers that pay off their balance in full every month, there essentially is no difference between these two methods. There is a difference between the two methods only in those months where a consumer paid off their previous balance in full, but did not pay off their current balance in full. In those months, the consumer will pay more interest under the ''two-cycle average daily balance method'' than under the ''average daily balance method.'' How much more interest the consumer pays depends on the amount of the purchases in the previous billing cycle, when those purchases were made, the amount of any payments made in that billing cycle, and when those payments were made.

In consumer testing conducted for the Board, virtually no participants understood the two balance computation methods most used by card issuers—the average daily balance method and the two-cycle average daily balance method—when those methods were just described by name. The GAO found similar results in its consumer testing. *See GAO Report on Credit Card Rates and Fees*, at pages 50–51. In the consumer testing conducted for the Board, a version of the table was used which attempted to explain briefly that the ''two-cycle average daily balance method'' would be more expensive than the ''average daily balance method'' for those consumers that sometimes pay their bill in full and sometimes do not. Participants' answers suggested they did not understand this disclosure. They appeared to need more information about how balances are calculated. Nonetheless, the addition of more information would likely add too much detail to the disclosures and result in ''information overload.'' In addition, it is unclear whether most consumers would consider the balance computation method when shopping for a credit card.

As a result, the Board proposes to retain a brief reference to the balance computation method, but move the disclosure from the table to directly below the table. *See* § 226.5a(a)(2)(iii). TILA Section 122(c)(2) states that for certain disclosures set forth in Section TILA 127(c)(1)(A), including the balance computation method, the Board shall require that the disclosure of such information shall, to the extent the Board determines to be practicable and appropriate, be in the form of a table. 15 U.S.C. 1632(c)(2). The Board believes that it is no longer appropriate to continue to disclose the balance computation method in the table, because the name of the balance computation method used by issuers does not appear to be meaningful to consumers without additional context and may distract from more important information contained in the table. The Board proposes to continue to require that issuers disclose the name of the balance computation method beneath the table, so that consumers and others will have access to this information if they find it useful.

5a(b)(8) Cash Advance Fee

Currently, comment 5a(b)(8)–1 provides that a card issuer must disclose only those fees it imposes for a cash advance that are finance charges under

§ 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no similar charge is imposed for ATM transactions not involving an extension of credit. As discussed in the section-by-section analysis to § 226.4, the Board proposes to provide that all transaction fees on credit cards would be considered finance charges. Thus, the Board proposes to delete the current guidance discussed in comment 5a(b)(8)–1 as obsolete.

5a(b)(12) Returned Payment Fee

Currently, § 226.5a does not require a card issuer to disclose a fee imposed when a payment is returned. The Board proposes to add § 226.5a(b)(12) to require issuers to disclose this fee in the table. Typically, card issuers will impose a fee and a penalty rate if a cardholder's payment is returned. As discussed above, the Board proposes to require card issuers to disclose in the table the reasons that a penalty rate may be imposed. *See* proposed § 226.5a(b)(1)(iv). The Board proposes that the returned payment fee be disclosed too, so that consumers are told both consequences of returned payments.

5a(b)(13) Cross References from Fees to Penalty Rate

Card issuers often impose both a fee and penalty rate for the same behavior—such as a consumer paying late, exceeding the credit limit, or having a payment returned. In consumer testing conducted for the Board, participants tended to associate paying penalty fees with certain behaviors (such as paying late or going over the credit limit), but they did not tend to associate rate increases with these same behaviors. By linking the penalty fees with the penalty rate, participants more easily understood that if they engage in certain behaviors, such as paying late, their rates may increase in addition to incurring a fee. Thus, the Board proposes to add § 226.5a(b)(13) to provide that if a card issuer may impose a penalty rate for any of the reasons that a penalty fee would be disclosed in the table (such as late payments, going over the credit limit, or returned payments), the issuer in disclosing the fee also must disclose that the penalty rate may apply, and a cross-reference to the penalty rate. Proposed Samples G–10(B) and G–10(C) provide guidance on how to provide these disclosures.

5a(b)(14) Required Insurance, Debt Cancellation Or Debt Suspension Coverage

Credit card issuers often offer optional insurance or debt cancellation or suspension coverage with the credit card. Under the current rules, costs associated with the insurance or debt cancellation or suspension coverage are not considered ''finance charges'' if the coverage is optional, the issuer provides certain disclosures to the consumer about the coverage, and the issuer obtain an affirmative written request for coverage after the consumer has received the required disclosures. Card issuers frequently provide the disclosures discussed above on the application form and a space to sign or initial an affirmative written request for the coverage. Currently, issuers are not required to provide any information about the insurance or debt cancellation or suspension coverage in the table that contains the § 226.5a disclosures.

In the event that a card issuer requires the insurance or debt cancellation or debt suspension coverage (to the extent permitted by state or other applicable law), the Board proposes new § 226.5a(b)(14) to require that the issuer disclose any fee for this coverage in the table. In addition, new § 226.5a(b)(14) would require that the card issuer also disclose a cross-reference to where the consumer may find more information about the insurance or debt cancellation or debt suspension coverage, if additional information is included on or with the application or solicitation. Proposed Sample G–10(B) provides guidance on how to provide the fee information and the cross-reference in the table. If insurance or debt cancellation or suspension coverage is required in order to obtain a credit card, the Board believes that fees required for this coverage should be highlighted in the table so that consumers are aware of these fees when considering an offer, because they will be required to pay the fee for this coverage every month in order to have the credit card.

5a(b)(15) Payment Allocation

Some credit card issuers will allocate payments first to balances that are subject to the lowest APR. For example, if a cardholder made purchases using a credit card account and then initiated a balance transfer, the card issuer might allocate a payment (less than the amount of the balances) to the transferred balance portion of the account if that balance was subject to a lower APR than the purchases. Card issuers often will offer a discounted initial rate on balance transfers (such as 0 percent for an introductory period) with a credit card solicitation, but not offer the same discounted rate for purchases. In addition, the Board is aware of at least one issuer that offers the same discounted initial rate for balance transfers and purchases for a specified period of time, where the discounted rate for balance transfers (but not the discounted rate for purchases) may be extended until the balance transfer is paid off if the consumer makes a certain number of purchases each billing cycle. At the same time, issuers typically offer a grace period for purchases if a consumer pays his or her bill in full each month. Card issuers, however, do not typically offer a grace period on balance transfers or cash advances. Thus, on the offers described above, a consumer cannot take advantage of both the grace period on purchases and the discounted rate on balance transfers. Because the payments will be allocated to the balance transfers first, the only way for a consumer to avoid paying interest on purchases—and thus have the benefit of the grace period—is to pay off the entire balance, including the balance transfer subject to the discounted rate.

The Board believes that it is important that consumers understand payment allocation in these circumstances, so that they can better understand the offer and decide whether to use this particular card for purchases. For example, if consumers knew that they would pay interest on all purchases made while paying off the balance transfer at the discounted rate, they might not use that particular card for purchases. They might use another card for purchases and pay that card in full every month to take advantage of the grace period on purchases. Or they might use another card with a lower purchase rate, if they did not plan to pay off the purchases in full each month.

In the consumer testing conducted for the Board, many participants did not understand that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure notice attempting to explain this to consumers. Nonetheless, testing showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the disclosure tested. The Board plans to conduct further testing of the disclosure to determine whether the disclosure can be improved to be more effectively communicate to consumers how payment allocation can affect their interest charges. Nonetheless, because some participants did benefit from the disclosure, and in light of further testing, the Board, under its authority pursuant to TILA Section 127(c)(5), proposes to add § 226.5a(b)(15) to require a card issuer to explain payment allocation to consumers. 15 U.S.C. 1637(c)(5). Proposed § 226.5a(b)(15) states that if (1) a card issuer offers a discounted initial rate on a balance transfers or cash advance that is lower than the rate on purchases, (2) the issuer offers a grace period on purchases, and (3) the issuer may allocate payments to the lower rate balance first, then the issuer must make certain disclosures in the table. Specifically, issuers would be required to disclose: (1) that the discounted initial rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. The Board would require these disclosures in the table only if the discounted initial rate applies to balance transfers or cash advances that consumers can request as part of accepting the offer. If the discounted initial rate only applies to subsequent balance transfers or checks that access a credit card account, the issuer would not need to provide this disclosure with the offer. The Board proposes to add comment 5a(b)(15)–1 to provide examples of when these disclosures must be given. The Board also proposes to add comment 5a(b)(15)–2 to specify that a card issuer may comply with the requirements in new § 226.5a(b)(15) by providing the applicable disclosures contained in proposed Samples G–10(B) and G–10(C).

5a(b)(16) Available Credit

Subprime credit cards often have substantial fees assessed when the account is opened. Those fees will be billed to the consumer as part of the first statement, and will substantially reduce the amount of credit that the consumer initially has available with which to make purchases or other transactions on the account. For example, for cards for which a consumer is given a minimum credit line of $250, after the start-up fees have been billed to the account, the consumer may have less than $100 of available credit with which to make purchases or other transactions in the first month. In addition, consumers will pay interest on these fees until they are paid in full.

The federal banking agencies have received a number of complaints from consumers with respect to cards of this type. Complainants often claim that they were not aware of how little available credit they would have after all the fees were assessed. Thus, the Board is proposing to add § 226.5a(b)(16) to inform consumers about the impact of these fees on their initial available credit. Specifically, § 226.5a(b)(16) would provide that if (1) a card issuer imposes required fees for the issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened, and (2) the total of those fees and/or security deposit equal 25 percent or more of the minimum credit limit applicable to the card, a card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the relevant account. In determining whether the 25 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If certain fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met in connection with the required fees or security deposit, the issuer must disclose the available credit after excluding any optional fees from the amounts debited to the account, and the available credit after including any optional fees in the amounts debited to the account. The Board believes that 25 percent is an appropriate threshold because it represents a significant reduction in the initial available credit as a result of the imposition of fees or security deposit. The Board solicits comment on this threshold amount.

In addition, the Board proposes comment 5a(b)(16)–1 to clarify that in calculating the amount of available credit that must be disclosed in the table, an issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed when the account is opened and charged to the account, such as one-time issuance and set-up fees that will be imposed when the card is opened. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (if applicable) if they are charged to the account immediately at account opening. Proposed Sample G–10(C) provides guidance to issuers on how to provide this disclosure. (*See* proposed comment 5a(b)(16)–2).

As described above, a card issuer would consider only required fees for issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened in determining whether the 25 percent threshold test is met. The Board requests comment on whether there are other fees (other than fees required for issuance or availability of credit) that are typically imposed on these types of accounts when the account is opened, and should be included in determining whether the 25 percent threshold test is met.

5a(b)(17) Reference to Board Web Site for Additional Information

In the December 2004 ANPR, the Board requested comment on suggestions for non-regulatory approaches that may further the Board's goal of improving the effectiveness of TILA's disclosures and substantive protections. Q57. In response to the ANPR, several commenters encouraged the Board to develop educational materials, such as pamphlets, targeted media, and interactive Web sites, that could educate consumers on a variety of topics related to shopping for and using credit cards. These commenters believe that certain topics that are difficult to explain to consumers, such as balance computation methods, are better provided in educational materials than in the TILA disclosures.

The Board proposes to revise § 226.5a to require that credit card issuers must disclose in the table a reference to a Board Web site and a statement that consumers can find on this Web site educational materials on shopping for and using credit card accounts. *See* proposed § 226.5a(b)(17). Such materials would expand those already available on choosing a credit card at the Board's Web site.[12] The Board recognizes that some consumers may need general education about how credit cards work and an explanation of typical account terms that apply to credit cards. In the consumer testing conducted for the Board, participants showed a wide range of knowledge about how credit cards work generally, with some participants showing a firm understanding of terms that relate to

[12] The materials can be found at *http://www.federalreserve.gov/pubs/shop/default.htm.*

credit card accounts, while others had difficulty expressing basic financial concepts, such as how the interest rate differs from a one-time fee. The Board's current Web site explains some basic financial concepts—such as what an annual percentage rate is—as well as terms that typically apply to credit card accounts. Through the Web site, the Board could expand the explanation of other credit card terms, such as balance computation methods, that may be difficult to explain concisely in the disclosures given with applications and solicitations.

As part of consumer testing, participants were asked whether they would use a Board Web site to obtain additional information about credit cards generally. Some participants indicated they might use the Web site, while others indicated that it was unlikely they would use such a Web site. Although it is hard to predict from the results of the testing how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a credit card and manage their account once they obtain a credit card. Thus, the Board is proposing that a reference to a Board Web site be included in the table because this is a cost-effective way to provide consumers with supplemental information on credit cards. The Board seeks comments on the content for the Web site.

Additional disclosures. In response to the December 2004 ANPR, several consumer groups suggested that the Board require information about the minimum payment formula, credit limit, any security interest, and all fees imposed on the account be disclosed in the table. The Board has decided not to propose this additional information in the table for the reasons detailed below.

1. *Minimum payment formula.* In the consumer testing conducted for the Board, participants did not tend to mention the minimum payment formula as one of the terms on which they shop for a card. In addition, minimum payment formulas used by card issuers can be complicated formulas that would be hard to describe concisely in the table. For example, while some issuers still use a percentage to calculate the payment, such as 2 percent of the outstanding balance or $10, whichever is less, other issuers use much more complicated formulas, such as ''the greater of (1) $15 or (2) 2 percent of the balance or (3) the applicable finance charges, and if the finance charges are largest, add $15 to that amount.'' Even if the Board were to require issuers to provide an example showing the amount of the minimum payment for a certain balance (for example, $1000), this example would be of doubtful usefulness for the many consumers who have balances different from the example. In addition, the example might mislead consumers, because one card might yield a lower minimum payment amount than another card for one balance (for example, $1000), but the second card might yield a lower minimum payment than the first card if the minimum payment was calculated on a different balance.

2. *Credit limit.* Card issuers often indicate a credit limit in a cover letter sent with an application or solicitation. Frequently, this credit limit is not stated as a specific amount but, instead, is stated as an ''up to'' amount, indicating the maximum credit limit for which a consumer may qualify. The actual credit limit for which a consumer qualifies depends on the consumer's creditworthiness, which is evaluated after the application or solicitation is submitted. Several consumer groups suggested that the Board include the credit limit in the table because it is a key factor for many consumers in shopping for a credit card. These groups also suggested that the Board require issuers to state a specific credit limit, and not an ''up to'' amount.

The Board is not proposing to include the credit limit in the table. As explained above, in most cases, the credit limit for which a consumer qualifies depends on the consumer's creditworthiness, which is fully evaluated after the application or solicitation has been submitted. In addition, in consumer testing conducted for the Board, participants were not generally confused by the ''up to'' credit limit. Most participants understood that the ''up to'' amount on the solicitation letter was a maximum amount, rather than the amount the issuer was promising them. Almost all participants tested understood that the credit limit for which they would qualify depended on their creditworthiness, such as credit history.

3. *Security interest.* Several consumer groups suggested that any required security interest should be disclosed in the table. These commenters suggest that if a security interest is required, the disclosure in the table should describe it briefly, such as ''in items purchased with card'' or ''required $200 deposit.'' These commenters indicated that a security deposit is a very important consideration in credit shopping, especially for low-income consumers. In addition, they stated that many credit cards issued by merchants are secured by the goods that the consumer purchases, but consumers are often unaware of the security interest.

The Board is not proposing to include a disclosure of any required security interest in the table at this time. Credit card-issuing merchants may include in their account agreements a security interest in the goods that are purchased with the card. It is not apparent that consumers would shop on whether a retail card has this type of security interest. Requiring or allowing this type of security interest to be disclosed in the table may distract from important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that may appear in the table, the Board is not proposing to include this disclosure in the table.With respect to security deposits, if a consumer is required to pay a security deposit prior to obtaining a credit card and that security deposit is not charged to the account but is paid by the consumer from separate funds, a card issuer must necessarily disclose to the consumer that a security deposit is required, so that the consumer knows to submit the deposit in order to obtain the card. A security deposit in these instances may already be sufficiently highlighted in the materials accompanying the application or solicitation, and may not need to appear in the table. Nonetheless, the Board recognizes that a security deposit may need to be highlighted when the deposit is not paid from separate funds but is charged to the account when the account is opened. In those cases, consumers may not realize that the security deposit may significantly decrease their available credit when the account is opened. Thus, as described above, the Board proposes to provide that if (1) a card agreement requires payment of a fee for issuance or availability of credit, or a security deposit, (2) the fee or security deposit will be charged to the account when it is opened, and (3) the total of those fees and security deposit equal 25 percent or more of the minimum credit limit offered with the card, the card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the card.

4. *Fees.* In response to the December 2004 ANPR, several consumer groups suggested that all fees imposed on an account should be included in the table. They believed that by requiring only certain fees in the table, card issuers have an incentive to devise new fees

that do not have to be disclosed so prominently. They indicate that if the Board excludes any fees, the list of such fees should be an exclusive list. They also suggested that the Board should require card issuers to report periodically on the volume of the excluded fees collected. If a certain type of fee increases in volume, these commenters suggested that the Board should delete this fee from the list of excluded fees on the grounds that that fee has become a more significant component of the cost of credit.

As described above, the Board is proposing to include certain transaction fees and penalty fees, such as cash advance fees, balance transfer fees, late-payment fees, and over-the-credit limit fees, in the table because these fees are frequently paid by consumers, and consumers have indicated these fees are important for shopping purposes. The Board is not proposing to include other fees in the table, such as copying fees and stop-payment fees, in the table because these fees tend to be imposed less frequently and are not fees on which consumers tend to shop. In consumer testing conducted for the Board, participants tended to mention cash advance fees, balance transfer fees, late-payment fees, and over-the-credit-limit fees as the most important fees they would want to know when shopping for a credit card. In addition, most participants understood that issuers were allowed to impose additional fees, beyond those disclosed in the table. Thus, the Board believes it is important to highlight in the table the fees that consumers want to know when shopping for a card, rather than including infrequently-paid fees, to avoid creating ''information overload'' such that consumers could not easily identify the fees that are most important to them. Nonetheless, the Board recognizes that fees can change over time, and the Board plans to monitor the market and update the fees required to be disclosed in the table as necessary.

5a(c) Direct-Mail and Electronic Applications

5a(c)(1) General

Electronic applications and solicitations. As discussed above, the Bankruptcy Act amends TILA Section 127(c) to require that solicitations to open a card account using the Internet or other interactive computer service must contain the same disclosures as those made for applications or solicitations sent by direct mail. 15 U.S.C. 1637(c)(7). The interim final rules adopted by the Board in 2001 revised § 226.5a(c) to apply the direct mail rules to electronic applications and solicitations. The Board proposes to retain these provisions in § 226.5a(c)(1). (Current § 226.5a(c) would be revised and renumbered as new § 226.5a(c)(1).) The same proposal was included in the Board's 2007 Electronic Disclosure Proposal.

The Bankruptcy Act also requires that the disclosures for electronic offers must be ''updated regularly to reflect the current policies, terms, and fee amounts.'' In the October 2005 ANPR, the Board also solicited comment on what guidance the Board should provide on how to apply that standard for credit card accounts. The Board's 2001 interim final rules provided guidance that disclosures for a variable-rate credit card plan provided electronically must be based on an APR in effect within the last 30 days. The 2001 guidance did not contain specific guidance on accuracy requirements for other disclosures provided electronically, such as disclosure of fees. The majority of commenters on the October 2005 ANPR which addressed the accuracy of variable rates agreed that a 30-day standard would be appropriate to implement the ''updated regularly'' standard in the Bankruptcy Act. Some commenters advocated longer periods such as 60 days or shorter periods such as daily or weekly updating, or suggested that the Board should not provide specific guidance or rules, instead allowing maximum flexibility in this area.

The Board proposes to revise § 226.5a(c) to implement the ''updated regularly'' standard in the Bankruptcy Act with regard to the accuracy of variable rates. A new § 226.5a(c)(2) would be added to address the accuracy of variable rates in direct mail and electronic applications and solicitations. This new section would require issuers to update variable rates disclosed on mailed applications and solicitations every 60 days and variable rates disclosed on applications and solicitations provided in electronic form every 30 days, and to update other terms when they change. The Board believes the 30-day and 60-day accuracy requirements for variable rates strike an appropriate balance between seeking to ensure consumers receive updated information and avoiding imposing undue burdens on creditors. The Board believes it is unnecessary for creditors to disclose to consumers the exact variable APR in effect on the date the application or solicitation is accessed by the consumer, so long as consumers understand that variable rates are subject to change. Moreover, it would be costly and operationally burdensome for creditors to comply with a requirement to disclose the exact variable APR in effect at the time the application or solicitation is accessed. The obligation to update the other terms when they change ensures that consumers receive information that is accurate and current, and should not impose significant burdens on issuers. These terms generally do not fluctuate with the market like variable rates. In addition, based on discussions with industry representatives concerning operational issues, the Board staff understands that issuers typically change other terms infrequently, perhaps once or twice a year.

Section 226.5a(c)(2) consists of two subsections. Section 226.5a(c)(2)(i) would provide that § 226.5a disclosures mailed to a consumer must be accurate as of the time the disclosures are mailed. This section would also provide that an accurate variable APR is one that is in effect within 60 days before mailing. Section 226.5a(c)(2)(ii) would provide that § 226.5a disclosures provided in electronic form (except for a variable APR) must be accurate as of the time they are sent to a consumer's e-mail address, or as of the time they are viewed by the public on a Web site. For the reasons discussed above, this section would provide that a variable APR is accurate if it is in effect within 30 days before it is sent, or viewed by the public. Presently, variable APRs on most credit cards may change on a monthly basis, so a 30-day accuracy requirement for variable APRs appears appropriate.

Many of the provisions included in proposed § 226.5a(c)(2) have been incorporated from current § 226.5a(b)(1). To eliminate redundancy, the Board proposes to revise § 226.5a(b)(1) by deleting § 226.5a(b)(1)(ii), § 226.5a(b)(1)(iii), and comment 5a(c)–1. The same revisions were included in the Board's 2007 Electronic Disclosure Proposal.

5a(d) Telephone Applications and Solicitations

5a(d)(2) Alternative Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Card issuers generally must provide certain cost disclosures during the oral conversation in which the application or solicitation is given. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. Specifically, the issuer must provide the disclosures required by § 226.5a(b) in a tabular format in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card), and disclose the fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card. The Board proposes to add comment 5a(d)–2 to indicate that an issuer may disclose in the table that the consumer is not required to accept the card or pay any fee unless the consumer uses the card.

5a(d)(3) Accuracy

Proposed § 226.5a(d)(3) would provide guidance on the accuracy of telephone disclosures. Current comment 5a(b)(1)–3 specifies that for variable-rate disclosures in telephone applications and solicitations, the card issuer must provide the rates currently applicable when oral disclosures are provided. For the alternative disclosures under § 226.5a(d)(2), an accurate variable APR is one that is (1) in effect at the time the disclosures are mailed or delivered; (2) in effect as of a specified date (which rate is then updated from time to time, for example, each calendar month); or (3) an estimate in accordance with § 226.5(c). Current comment 5a(b)(1)–3 would be moved to § 226.5a(d)(3), except that the option of estimating a variable APR would be eliminated as the least meaningful of the three options. Proposed § 226.5a(d)(3) also would specify that if an issuer discloses a variable APR as of a specified date, the issuer must update the rate on at least a monthly basis, the frequency with which variable rates on most credit card products are adjusted. The Board also would amend proposed § 226.5a(d)(3) to specify that oral disclosures under § 226.5a(d)(i) must be accurate when given, consistent with the requirement in § 226.5(c) that disclosures must reflect the terms of the legal obligation between the parties. For the alternative disclosures, terms other than variable APRs must be accurate as of the time they are mailed or delivered. *See* proposed § 226.5a(d)(3).

5a(e) Applications and Solicitations Made Available to General Public

TILA Section 127(c)(3) and § 226.5a(e) specify rules for providing disclosures in applications and solicitations made available to the general public such as ''take-one'' applications and catalogs or magazines. 15 U.S.C. 1637(c)(3). These applications and solicitations must either contain: (1) The disclosures required for direct mail applications and solicitations, presented in a table; (2) a narrative that describes how finance charges and other charges are assessed; or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

Narrative that Describes How Finance Charges and Other Charges Are Assessed. TILA Section 127(c)(3)(D) and § 226.5a(e)(2) allow issuers to meet the requirements of § 226.5a for take-one applications and solicitations by giving a narrative description of certain account-opening disclosures (such as information about how finance charges and other charges are assessed), a statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose. 15 U.S.C. 1637(c)(3)(D). Currently, this information does not need to be in the form of a table, but may be a narrative description, as is also currently allowed for account-opening disclosures. The Board is proposing, however, to require that certain account-opening information (such as information about key rates and fees) must be given in the form of a table. *See* the section-by-section analysis to § 226.6(b)(4). Therefore, the Board also is proposing that card issuers give this same information in a tabular form in take-one applications and solicitations. Thus, the Board proposes to delete § 226.5a(e)(2) and comments 5a(e)(2)–1 and –2 as obsolete. Card issuers that provide cost disclosures in take-one applications and solicitations would be required to provide the disclosures in the form of a table, for which they could use the account-opening summary table. *See* § 226.5a(e)(1) and comment 5a–2.

5a(e)(4) Accuracy

For applications or solicitations that are made available to the general public, if a creditor chooses to provide the cost disclosures, § 226.5a(b)(1)(ii) currently requires that any variable APR disclosed must be accurate within 30 days before printing. The proposal would move this provision to § 226.5a(e)(4). Proposed § 226.5a(e)(4) also would specify that other disclosures must be accurate as of the date of printing.

5a(f) In-Person Applications and Solicitations

Card issuer and person extending credit are not the same. Existing § 226.5a(f) and its accompanying commentary contain special charge card rules that address circumstances in which the card issuer and the person extending credit are not the same person. (These provisions implement TILA Section 127(c)(4)(D), 15 U.S.C. 1637(c)(4)(D).) The Board understands that these types of cards are no longer being offered. Thus, the Board proposes to delete these provisions and the Model Clause G–12 from Regulation Z as obsolete, recognizing that the statutory provision in TILA Section 127(c)(4)(D) will remain in effect if these products are offered in the future. The Board requests comment on whether these provisions should be retained in the regulation. A commentary provision referencing the statutory provision would be added to § 226.5(d), which addresses disclosure requirements for multiple creditors. *See* proposed comment 5(d)–3.

In-person applications and solicitations. The Board is proposing a new § 226.5a(f) and accompanying commentary to address in-person applications and solicitations initiated by the card issuer. In in-person applications, a card issuer initiates a conversation with a consumer inviting the consumer to apply for a card account, and if the consumer responds affirmatively, the issuer takes application information from the consumer. For example, in-person applications include instances in which a retail employee, in the course of processing a sales transaction using the customer's bank credit card, invites the customer to apply for the retailer's credit card and the customer submits an application.

In in-person solicitations, a card issuer offers a consumer in-person to open an account that does not require an application. For example, in-person solicitations include instances where a bank employee offers a preapproved credit card to a consumer who came into the bank to open a checking account.

Currently, in-person applications in response to an invitation to apply are exempted from § 226.5a because they are considered applications initiated by consumers. (*See* current comments 5a(a)(3)–2 and 5a(e)–2.) On the other hand, in-person solicitations are not specifically addressed in § 226.5a. Neither in-person applications nor solicitations are specifically addressed in TILA.

The Board proposes to cover in-person applications and solicitations under § 226.5a, pursuant to the Board's authority under TILA Section 105(a). Requiring in-person applications and solicitations to include credit terms under § 226.5a could help serve TILA's purpose to provide meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available to him or her, and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Also, the Board understands that card issuers routinely provide § 226.5a disclosures in these circumstances; therefore, any additional compliance burden would be minimal.

Card issuers must provide the disclosures required by § 226.5a in the form of a table, and those disclosures must be accurate when given (consistent with the direct mail rules) or when printed (consistent with one option for the take-one rules). *See* § 226.5a(c), (e)(1). These two alternatives appear to provide issuers flexibility, while also providing consumers with the information they need to make informed credit decisions. Existing comment 5a(a)(3)–2 (which would be moved to comment 5a(a)(5)–1) and comment 5a(e)–2 would be revised to be consistent with § 226.5a(f).

5a(g) Balance Computation Methods Defined

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, the issuer must disclose that name of the balance computation method as part of the disclosures required by § 226.5a, and is not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6). Currently, the Board has named four balance computation methods: (1) Average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. The Board proposes to retain these four balance computation methods. The Board requests comment on whether the list should be revised, along with data indicating why.

Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. *15* U.S.C. 1637(a). *See* also Model Forms G–2 and G–3 in Appendix G.

Home-equity lines of credit. Account-opening disclosure and format requirements for home-equity lines of credit (HELOCs) subject to § 226.5b would be unaffected by the proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a separate rulemaking. To facilitate compliance, the substantively unrevised rules applicable only to HELOCs are grouped together in proposed § 226.6(a), including rules relating to the disclosure of finance charges, other charges, and specific HELOC-related disclosures. (*See* redesignation table below.) For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

Open-end (not home-secured) plans. The Board proposes two significant revisions to account-opening disclosures for open-end (not home-secured) plans, which are set forth in proposed § 226.6(b). The rule would (1) require a tabular summary of key terms to be provided before an account is opened (*see* proposed § 226.6(b)(4)), and (2) reform how and when cost disclosures must be made (*see* proposed § 226.6(b)(1) for content, § 226.5(b) and § 226.9(c) for timing). The Board proposes to apply the tabular summary requirement to all open-end loan products, except HELOCs. Such products include credit card accounts, traditional overdraft credit plans, personal lines of credit, and revolving plans offered by retailers without a credit card. The benefit to consumers from receiving a concise summary of rates and important fees appears to outweigh the costs, such as developing the new disclosures and revising them as needed.

Disclosure requirements in § 226.6 that potentially affect all open-end creditors, namely rules relating to security interests and billing error disclosure requirements, are grouped together in proposed § 226.6(c). The section also would be retitled ''Account-opening disclosures'' to more accurately reflect the timing of the disclosures. In today's marketplace, there are few open-end products for which consumers receive the disclosures required under § 226.6 as their ''initial'' Truth in Lending disclosure. *See* § 226.5a, § 226.5b. The substance of footnotes 11 and 12 is moved to the regulation; the substance of footnote 13 is moved to the commentary. (*See* redesignation table below.)

In technical revisions, comments 6–1 and 6–2 would be deleted. The substance of comment 6–1, which requires consistent terminology, is discussed more generally in proposed § 226.5(a)(2). Comment 6–2 addresses certain open-end plans involving more than one creditor, and is proposed to be deleted as obsolete. *See* section-by-section analysis to § 226.5a(f).

Tabular summary. As provided by Regulation Z, creditors may, and typically do, include account-opening disclosures as a part of an account agreement document that also contains other contract terms and state-law disclosures. The agreement is typically lengthy and in small print. In the December 2004 ANPR, the Board sought comment on possible approaches to ease consumers' ability to navigate account-opening disclosures, such as a summary paragraph, a table similar to the one required on or with credit and charge card applications, or a table of contents to highlight key features and terms of the account. Q2–Q3.

Commenters generally encouraged the Board to consider format rules that focus on providing essential terms in a simplified way. In general, commenters suggested that a summary of key terms would improve the effectiveness of the now-lengthy and complex account agreement documents. Some industry commenters, however, opposed a summary. These commenters noted that the current format rules integrating account terms and TILA disclosures allow creditors to explain features coherently, and noted that summarizing information and repeating it in detail in the contract document may result in information overload. As a part of consumer research conducted for the Board regarding consumer understanding of current TILA disclosures, tests simulated consumers' review of packets of information typically received when new accounts are opened. Most of the consumers in the Board's sample group set aside the lengthy multi-fold account agreement pamphlets without reading them, saying they were too long, the type was too small, and the language too legalistic. Consumers who reviewed packets that included a summary of account terms generally noticed and reviewed the summary, even if they set aside the contract document.

Based on public comment, consumer testing, and its own analysis, the Board is proposing to introduce format requirements for account-opening disclosures for open-end (not home-secured) plans. The Board proposes to summarize key information most important to informed decision-making in a table similar to that required on or with credit and charge card applications and solicitations. The proposal would permit TILA disclosures that are typically lengthy or complex and less-often used in determining how to use an account, such as how variable rates are determined, to be integrated with the account agreement terms. The content requirements for the proposed summary are set forth in new § 226.6(b)(4) and are discussed below; proposed Model Form G–17(A) and Samples G–17(B) and G–17(C) in Appendix G illustrate the table.

Charges imposed as part of the plan. The Board proposes to reform its rules regarding cost disclosures provided at account opening for open-end (not home-secured) plans. Under TILA and current Regulation Z, account-opening disclosures must include charges that are either a ''finance charge'' or an ''other charge'' (TILA charges). According to TILA, a charge is a finance charge if it is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor ''as an incident to the extension of credit.'' The Board implemented the definition by including as a finance charge under Regulation Z, any charge imposed ''as an incident to or a condition of the extension of credit.'' TILA also requires a creditor to disclose, before opening an account, ''other charges which may be imposed as part of the plan * * * in accordance with regulations of the Board.'' The Board implemented the provision virtually verbatim, and the staff commentary interprets the provision to cover ''significant charges related to the plan.'' *15* U.S.C. 1605(a), § 226.4; 15 U.S.C. 1637(a)(5), § 226.6(b), current comment 6(b)–1.

The terms ''finance charge'' and ''other charge'' are given broad and flexible meanings in the regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. As creditors develop new kinds of services, some find it difficult to determine if associated charges for the new services meet the standard for a ''finance charge'' or ''other charge'' or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to classify fees. Examples of charges that are included or excluded charges are in the regulation and commentary, but they cannot provide definitive guidance in all cases.

A 2003 rulemaking concerning charges for two services—expediting payments and expediting card delivery—illustrates the challenges in applying current rules. 68 FR 16,185; April 3, 2003. Public comments on the proposal reflected a lack of consensus about the proposed interpretations of expedited payment fee as an ''other charge'' and expedited card delivery fee as not covered by TILA. More broadly, the comments reflected a lack of consensus over the basic principles that should determine whether a charge is a finance charge or an ''other charge.''

In the final rule, staff adopted official interpretations indicating that neither charge was a charge covered by TILA. In the supplementary information accompanying the final rule, Board staff recognized that requiring a written disclosure of a charge for a service long before the consumer might consider purchasing the service did not provide the consumer with any material benefit. The staff also noted creditors' current practice of disclosing the charge when the service is requested, and encouraged the continuation of that practice.

Board staff also indicated that a more comprehensive review of existing rules was needed. Accordingly, the December 2004 ANPR solicited comment on the effectiveness of the rules governing disclosure of charges covered by TILA, and on potential alternatives. The comments indicated a consensus that the current approach should be replaced with a new one. Commenters split, however, on the proper approach. Most focused on the definition of ''finance charge'' or ''other charge.'' Approaches ranged from industry's suggestions to restrict finance charges to interest or to charges required as a condition to the extension of credit, to consumer groups' suggestion to include virtually all charges the consumer would pay. While commenters disagreed over which approach would best serve TILA's purposes, they shared a common objective: Provide a clear test.

In light of the comments received, consumer testing, and the Board's experience and analysis, the Board is proposing to reform the rules governing disclosure of charges before they are imposed, as discussed below. The proposed rule is intended to respond collectively to these concerns by (1) giving full effect to TILA's requirement that all charges imposed as part of an open-end (not home-secured) plan be disclosed before they are imposed, (2) specifying precisely important costs that must be disclosed in writing at account opening (e.g., interest rates, annual fees, and late-payment or over-the-credit-limit fees), and (3) permitting the creditor to disclose all other charges imposed as part of the plan (e.g., fees to expedite payments or to provide an additional card) at account opening *or* orally at any time before the consumer agrees to or becomes obligated to pay the charge. Charges added or increased during the life of the plan would be subject to similar rules. *See* § 226.9(c)(2).

Under the proposal, some charges would be covered by TILA that the current regulation, as interpreted by the staff commentary, excludes from TILA coverage, such as fees for expedited payment and expedited delivery. It may not have been useful to consumers to cover such charges under TILA when such coverage would have meant only that the charges were disclosed long before they became relevant to the consumer. It may, however, be useful to cover such charges under TILA as part of a rule that permits their disclosure at a (later) more relevant time. Further, as new services (and associated charges) are developed, the proposal is intended to reduce uncertainty of how to disclose such fees and risks of civil liability. The list of charges creditors must disclose in the account-opening table would be specific and exclusive, not open-ended as is the case today. Creditors could otherwise comply with the rule by disclosing other costs at any other relevant time.

6(a) Rules Affecting Home-Equity Plans

For the reasons discussed above and as illustrated in the redesignation table below, the proposal would set forth in § 226.6(a) all requirements applying exclusively to home-equity plans subject to § 226.5b (HELOCs). Rules relating to the disclosure of finance charges currently in § 226.6(a)(1) through (4) would be moved to proposed § 226.6(a)(1)(i) through (iv); those rules and accompanying official staff interpretations are substantively unchanged. Rules relating to the disclosure of other charges would be moved from current § 226.6(b) to proposed § 226.6(a)(2), and specific HELOC-related disclosure requirements would be moved from current § 226.6(e) to proposed § 226.6(a)(3). Several technical revisions to commentary provisions are proposed for clarity and in some cases for consistency with corresponding comments to proposed § 226.6(b)(2), which addresses rate disclosures for open-end (not home-secured) plans, but these revisions are not intended to be substantive. *See*, for example, proposed comments 6(a)(1)(ii)–1 and 6(b)(2)(i)(B)–1, which address disclosing ranges of balances. Also, commentary provisions that currently apply to open-end plans generally but are inapplicable to HELOCs would not be moved. For example, guidance in current 6(a)(2)–2 regarding a creditor's general reservation of the right to change terms would not be moved to proposed comment 6(a)(1)(ii)–2, because § 226.5b(f)(1) prohibits ''rate-reservation'' clauses for HELOCS. Comment 6–1, which addresses the need for consistent terminology with periodic statement disclosures, would be deleted as duplicative. *See* proposed § 226.5(a)(2)(i).

6(b) Rules Affecting Open-End (Not Home-Secured) Plans

6(b)(1) Charges Imposed as Part of Open-End (Not Home-Secured) Plans

Proposed § 226.6(b)(1) would apply to all open-end plans except HELOCs subject to § 226.5b. It retains TILA's general requirements for disclosing costs for open-end plans: Creditors would be required to continue to disclose the circumstances under which charges are imposed as part of the plan, including the amount of the charge (e.g., $3.00) or an explanation of how the charge is determined (e.g., 3 percent of the transaction amount). For finance charges, creditors must include a statement of when the finance charge begins to accrue and an explanation of whether or not a ''grace period'' or ''free-ride period'' exists (a period within which any credit that has been extended may be repaid without incurring the charge). Regulation Z generally refers to this period as a ''free-ride period.'' Since 1989, creditors have been required to use the term ''grace period'' in complying with disclosure requirements for credit and charge card applications and solicitations in § 226.5a. *15* U.S.C. 1632(c)(2)(C); current § 226.5a(a)(2)(iii); 54 FR 13,856; April 6, 1989. For consistency and the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

Currently, the rules for disclosing costs related to open-end plans create two categories of charges covered by TILA: finance charges (§ 226.6(a)) and ''other charges'' (§ 226.6(b)). Under the proposal, the rules would create a single category of ''charges imposed as part of an open-end (not home-secured) plan'' as identified in proposed § 226.6(b)(1)(i). This new section would identify a complete description of the types of charges that would be considered to be imposed as part of a plan. These charges include finance charges under § 226.4(a) and (b), penalty charges, taxes, and charges for voluntary credit insurance, debt cancellation or debt suspension coverage.

Charges to be disclosed would also include any charge the payment, or nonpayment, of which affects the consumer's access to the plan, duration of the plan, the amount of credit extended, the period for which credit is extended, and the timing or method of billing or payment. This proposed provision is intended to be broad but provide greater clarity than current rules and capture charges that relate to the key attributes of a credit plan. The proposed commentary would provide examples of charges covered by the provision, such as application fees and participation fees (which affect access to the plan), fees to expedite card delivery (which also affect access to the plan), and fees to expedite payment (which affect the timing and method of payment). *See* proposed comment 6(b)(1)(i)–2.

Three examples of types of charges that are not imposed as part of the plan are listed in proposed § 226.6(b)(1)(ii). These examples include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; and charges for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature. Comment 6(b)(1)(ii)–1 provides examples of fees for packages of services that are considered to be imposed as part of the plan and fees for packages of services that are not. This comment is substantively identical to current comment 6(b)–1.v.

The proposal would not completely eliminate ambiguity about what are TILA charges. To mitigate ambiguity, however, the proposal provides a complete list in new § 226.6(b)(4) of which charges identified under § 226.6(b)(1) must be disclosed in writing at account opening (or before they are increased or newly introduced). *See* proposed § 226.5(b)(1) and § 226.9(c)(2) for timing rules. Any fees aside from those identified in proposed § 226.6(b)(4) would not be required to be disclosed in writing at account opening. However, other charges imposed as part of an open-end (not home-secured) plan may be disclosed at account opening, or orally at any relevant time before the consumer agrees to or becomes obligated to pay the charge. This approach is intended in part to reduce creditor burden. Creditors presumably disclose fees at relevant times, such as when a consumer orders a service by telephone, for business reasons and to comply with other state and federal laws. Moreover, compared to the approach reflected in the current regulation, the proposed broad application of the statutory standard of fees ''imposed as part of the plan'' should make it easier for a creditor to determine whether a fee is a charge covered by TILA, and reduce litigation and liability risks. In addition, this approach will help ensure that consumers receive the information they need when it would be most helpful to them.

6(b)(2) Rules Relating to Rates for Open-End (Not Home-Secured) Plans

Rules for disclosing rates that affect the amount of interest that will be imposed would be reorganized and consolidated in proposed § 226.6(b)(2). (*See* redesignation table below.)

6(b)(2)(i)

Finance charges attributable to periodic rates. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest but may include other costs such as premiums for required credit insurance. As discussed earlier, in consumer testing for the Board, participants understood credit costs in terms of interest and fees. The text of proposed § 226.6(b)(2)(i) reflects the Board's intention to make the distinction between interest and fees clear.

Balance computation methods. Proposed § 226.6(b)(2)(i) sets forth rules relating to the disclosure of rates. Proposed § 226.6(b)(2)(i)(D) (currently § 226.6(a)(3)) requires creditors to explain the method used to determine the balance to which rates apply. 15 U.S.C. 1637(a)(2). Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G–1. The Board requests comment on whether model clauses for methods such as ''adjusted balance'' and ''previous balance'' should be deleted as obsolete, and more broadly, whether G–1 should be eliminated entirely because creditors no longer use the model clauses.

In the December 2004 ANPR, the Board sought comment on how significantly the choice of a balance computation method might affect consumers' cost of credit, and on possible ways to enhance the effectiveness of any required disclosure. Q28–Q30. Commenters acknowledged that balance computation methods can affect consumers' cost of credit but in general would favor an approach that emphasizes other key cost terms instead of the details of balance computation methods. The Board concurs with these views.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during a billing cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose all the information necessary to compute balances to which periodic rates are applied, and requiring that level of detail would not appear to benefit consumers because consumers are unlikely to review such detailed information. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find explanations in account agreements to be lengthy and complex, and are not understood. The proposal would require creditors to continue to explain the balance computation methods in the account-opening agreement, but the explanation would not be permitted in the account-opening summary. As discussed below, along with the account-opening summary proposed in § 226.6(b)(4), creditors would name the balance computation method and refer consumers to the account-opening disclosures for an explanation of the balance computation method.

6(b)(2)(ii)

New § 226.6(b)(2)(ii) would set forth the rules for variable-rate disclosures now contained in footnote 12. In addition, guidance on the accuracy of variable rates provided at account opening would be moved from the commentary to the regulation, and revised. Currently, comment 6(a)(2)–3 provides that creditors may provide the current rate, a rate as of a specified date if the rate is updated from time to time, or an estimated rate under § 226.5(c). The Board proposes an accuracy standard that is consistent with the Board's 2007 Electronic Disclosure Proposal; that is, the rate disclosed is accurate if it was in effect as of a specified date within 30 days before the disclosures are provided. *See* 72 FR 21,1141; April, 30, 2007. The proposal would eliminate creditors' option to provide an estimate as the rate in effect for a variable-rate account. The Board believes creditors are provided with sufficient flexibility under the proposal to provide a rate as of a specified date, so the use of an estimate would not be appropriate. New proposed comment 6(b)(2)(ii)–5, which addresses discounted variable-rate plans and is substantively unchanged from current comment 6(a)(2)–10, contains technical revisions.

The Board also proposes to require that, in describing how a variable rate is determined, creditors must disclose the applicable margin, if any. *See* proposed § 226.6(b)(2)(ii)(B). Creditors state the margin for purposes of contract or other law and are currently required to disclose margins related to penalty rates, if applicable. No particular format requirements would apply. Thus, the Board does not expect the revision would add burden.

6(b)(2)(iii)

New § 226.6(b)(2)(iii) would consolidate existing rules for rate changes that are specifically set forth in the account agreement but are not due to changes in an index or formula, such as rules for disclosing introductory and penalty rates. In addition to identifying the circumstances under which a rate may change (such as the end of an introductory period or a late payment), creditors would be required to disclose how existing balances would be affected by the new rate. The proposed change is intended to improve consumer understanding as to whether a penalty rate triggered by, for example, a late payment would apply not only to outstanding balances for purchases but to existing balances that were transferred at a low promotional rate. If the increase in rate is due to an increased margin, creditors must disclose the increase; the highest margin can be stated if more than one might apply. *See* proposed comment 6(b)(2)(iii)–2.

6(b)(3) Voluntary Credit Insurance; Debt Cancellation or Suspension

As discussed in the section-by-section analysis to § 226.4, the Board is proposing revisions to the requirements to exclude charges for voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge. *See* proposed § 226.4(d). Creditors must provide information about the voluntary nature and cost of the credit insurance or debt cancellation or suspension product, and about the nature of coverage for debt suspension products. Because creditors must obtain the consumer's affirmative request for the product as a part of the disclosure requirements, the Board expects the disclosures proposed under § 226.4(d) will be provided at the time the product is offered to the consumer. Thus, consumers may receive the disclosures at the time they open an open-end account, or earlier in time, such as at application.

6(b)(4) Tabular Format Requirements for Open-End (Not Home-Secured) Plans

Proposed § 226.6(b)(4) would introduce format requirements for account-opening disclosures for open-end (not home-secured) plans. The proposed summary of account-opening disclosures is based on the format and content requirements for the tabular disclosures provided with direct mail applications for credit and charge cards under § 226.5a, as it would be revised under the proposal. Proposed forms under G–17 in Appendix G illustrate the account-opening tables. As proposed, comment 6(b)(4)–1 would refer generally to guidance in § 226.5a regarding format and disclosure requirements for the application and solicitation table. For clarity, rules under § 226.5a that do not apply to account-opening disclosures are specifically noted. Comment is requested on this approach, or whether importing essentially identical guidance from § 226.5a to § 226.6 would ease compliance.

Rates. Proposed § 226.6(b)(4)(ii) sets forth disclosure requirements for rates that would apply to accounts. Periodic rates and index and margin values would not be permitted to be disclosed in the table, for the same reasons underlying, and consistent with, the proposed requirements for the table provided with credit card applications and solicitations. *See* comment 6(b)(4)(ii)–1. Creditors would continue to disclose periodic rates, and index and margin values as part of the account opening disclosures, and these could be provided in the credit agreement, as is likely currently the case.

The rate disclosures required for the account-opening table differ from those required for the table provided with credit card applications and solicitations. For applications and solicitations, creditors may provide a range of APRs or specific APRs that may apply, where the APR is based on a later determination of the consumer's creditworthiness. At account opening, creditors must disclose the specific APRs that will apply to the account.

Fees. Fees that would be highlighted in the account-opening summary are identified in § 226.6(b)(4)(iii). The Board believes that these fees, among the charges that TILA covers, are the most important fees, at least in the current marketplace, for consumers to know about before they start to use an account. They include charges that the consumer could incur without creditors otherwise being able to disclose the cost in advance of the consumers' act that triggers the cost, such as fees triggered by a consumer's use of a cash advance check or by a consumers' late payment. Transaction fees imposed for transactions in a feign currency or that take place in a foreign country would be among the fees disclosed at account opening, though the Board is not proposing to require that foreign transaction fees be disclosed in the table provided with credit card applications and solicitations. *See* section-by-section analysis to § 226.5a(b)(4). Although consumer testing for the Board indicated that consumers do not choose to apply for a card based on foreign transaction fees, the Board believes highlighting the fee may be useful for some consumers before they obtain credit on the account.

The Board intends this list of fees to be exclusive, for two reasons. An exclusive list eases compliance and reduces the risk of litigation; creditors have the certainty of knowing that as new services (and associated fees) develop, the new fees need not be highlighted in the account-opening summary unless and until the Board requires their disclosure after notice and public comment. And as discussed in the section-by-section analysis to § 226.5(a)(1) and § 226.5(b)(1), charges required to be highlighted under new § 226.6(b)(4) would have to be provided in a written and retainable form before the first transaction and before being increased or newly introduced. Creditors would have more flexibility regarding disclosure of other charges imposed as part of an open-end (not home-secured) plan.

The exclusive list of fees also benefits consumers. The list focuses on fees consumer testing conducted for the Board showed to be most important to consumers. The list is manageable and focuses on key information rather than attempting to be comprehensive. Since all fees imposed as part of the plan must be disclosed before the cost is incurred, not all fees need to be included in the table.

The Board notes that if the amount of a fee such as a late-payment fee or balance transfer fee varies from state to state, for disclosures required to be provided with credit card applications and solicitations, card issuers may disclose a range of fees and a statement that the amount of the fee varies from state to state. *See* existing § 226.5a(a)(5), renumbered as new § 226.5a(a)(4). A goal of the proposed account-opening summary table is to provide to a consumer with key information about the terms of the account. Permitting creditors to disclose a range of fees seems not to meet that standard. Nonetheless, the Board solicits comment on whether there are any operational issues presented by the proposed rule to disclose fees applicable to the consumer's account in the account-opening summary table, and if so, suggested solutions.

Grace period. Under TILA, creditors providing disclosures with applications and solicitations must discuss grace periods on purchases; at account opening, creditor must explain grace periods more generally. 15 U.S.C. 1637(c)(1)(A)(iii); *15* U.S.C. 1637(a)(1). Under proposed § 226.6(b)(4)(iv), creditors would state for all balances on the account, whether or not a period exists in which consumers may avoid the imposition of finance charges, and if so, the length of the period.

Required insurance, debt cancellation or debt suspension. For the reasons discussed in the section-by-section analysis to § 226.5a(b)(14), as permitted by applicable law, creditors that require credit insurance, or debt cancellation or debt suspension coverage, as part of the plan would be required to disclose the cost of the product and a reference to the location where more information about the product can be found with the account-opening materials, as applicable. *See* proposed § 226.6(b)(4)(v).

Payment allocation. In the December 2004 ANPR, the Board asked about creditors' payment allocation methods, how the methods are typically disclosed, and whether additional disclosures about payment allocation should be required. Q34–Q36. Responses suggest that in general, creditors tend to apply consumers' payments to satisfy low-rate balances first, but that payment allocation methods vary. The timing and detail of disclosures also vary. Some card issuers disclose their payment allocation policies in materials accompanying credit card applications, while others provide information as part of the account agreement. Descriptions of payment allocation are typically general.

The Board proposes in § 226.6(b)(4)(vi) to require creditors to disclose, if applicable, the information proposed to be required with credit card applications and solicitations regarding how payments will be allocated if the consumer transfers balances at a low rate and then makes purchases on the account. The Board believes the information is useful to the consumer, although perhaps more so at the time of application when consumers may establish an account to take advantage of a promotional balance transfer rate. Because the Board is proposing to allow the account-opening table to substitute for the table given with an application or solicitation, the Board proposes also to include the payment allocation disclosure in the account-opening summary, to ensure that consumers receive this information, if applicable, at the time of application or solicitation.

Available credit. For the reasons discussed under § 226.5a(b)(16), the Board proposes a disclosure targeted at subprime card accounts that assess substantial fees at account opening and leave consumers with a limited amount of available credit. Proposed § 226.6(b)(4)(vii) would require creditors to disclose in the account-opening table the disclosures required under § 226.5a(b)(16). The proposed requirements would apply to creditors that require fees for the availability or issuance of credit, or a security deposit, that equals 25 percent or more of the minimum credit limit offered on the account. If that threshold is met, card issuers must disclose in the table an example of the amount of available credit the consumer would have after the fees or security deposit are debited to the account, assuming the consumer receives the minimum credit limit.

Web site reference. For the reasons stated under § 226.5a(b)(17), credit card issuers would be required under proposed § 226.6(b)(4)(viii) to provide a reference to the Board's Web site for additional information about shopping for and using credit card accounts.

Balance computation methods. TILA requires creditors to explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). Explaining balance computation methods in the account-opening table may not benefit consumers, because the explanations can be lengthy and complex, and consumer testing indicates the explanations are not understood. Including an explanation in the table also may undermine the goal of presenting essential information in a simplified way. Nonetheless, some balance computation methods are more favorable to consumers than others, and the Board believes it is appropriate to highlight the method used, if not the technical computation details. For those reasons, the Board proposes that the name of balance computation methods used be disclosed beneath the table, along with a statement that an explanation of the method is provided in the account agreement or disclosure statement. *See* proposed § 226.6(b)(4)(ix). To determine the name of the balance computation method to be disclosed, creditors would refer to § 226.5a(g) for a list of commonly-used methods; if the method used is not among those identified, creditors would provide a brief explanation in place of the name.

Billing error rights reference. All creditors offering open-end plans must provide notices of billing rights at account opening. *See* current § 226.6(d); proposed § 226.6(c)(2). This information is important, but lengthy. The Board proposes to draw consumers' attention to the notices by requiring a statement that information about billing rights and how to exercise them is provided in the account-opening disclosures. *See* proposed § 226.6(b)(4)(x). The statement, along with the name of the balance computation method, would be located directly below the table.

6(c) Rules of General Applicability

6(c)(1) Security Interests

Comments to proposed § 226.6(c)(1) (current § 226.6(c)) are revised for clarity, without any substantive change. &

6(c)(2) Statement of Billing Rights

Creditors offering open-end plans must provide information to consumers at account opening about consumers' billing rights under TILA, in the form prescribed by the Board. 15 U.S.C. 1637(a)(7). This requirement is implemented in the Board's Model Form G–3. The Board is proposing revisions to Model Form G–3, proposed as G–3(A). The proposed revisions are not based on consumer testing, although design techniques and changes in terminology are proposed to improve consumer understanding of TILA's billing rights. Creditors offering HELOCs subject to § 226.5b could continue to use current Model Form G–3, or proposed G–3(A), at the creditor's option.

Section 226.7 Periodic Statement

TILA Section 127(b), implemented in § 226.7, identifies information about an open-end account that must be disclosed when a creditor is required to provide periodic statements. 15 U.S.C. 1637(b).

Home-equity lines of credit. Periodic statement disclosure and format requirements for home-equity lines of credit (HELOCs) subject to § 226.5b would be unaffected by the proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a separate rulemaking. To facilitate compliance, the substantively unrevised rules applicable only to HELOCs are grouped together in proposed § 226.7(a). (*See* redesignation table below.)

Open-end (not home-secured) plans. The Board proposes a number of significant revisions to periodic statement disclosures for open-end (not home-secured) plans. These rules are grouped together in proposed § 226.7(b). First, interest and fees imposed as part of the plan during the statement period would be disclosed in a simpler manner and in a consistent location. Second, the Board is proposing for comment two alternative approaches to disclose the effective APR: The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach would eliminate the requirement to disclose the effective APR. Third, if an advance notice of changed rates or terms is provided on or with a periodic statement, a summary of the change would be required on the front of the periodic statement. Model clauses would illustrate the proposed revisions, to facilitate compliance. In addition, the Board proposes to add new paragraphs § 226.7(b)(11) and (12) to implement disclosures regarding late-payment fees and the effects of making minimum payments in Section 1305(a) and 1301(a) of the Bankruptcy Act (further discussed below). TILA Section 127(b)(11) and (12); 15 U.S.C. 1637(b)(11) and (12).

A number of technical revisions are made for clarity. For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change. Current comment 7–2, which addresses open-end plans involving more than one creditor, would be deleted as obsolete and unnecessary.

Format requirements for periodic statements. TILA and Regulation Z contain few formatting requirements for periodic statement disclosures. In the December 2004 ANPR, the Board noted that some information about past account activity also may be useful to consumers in making future decisions concerning the plan. The Board sought comment on possible ways to format information to improve the effectiveness of periodic statement disclosures, including proximity requirements or grouping of terms or fees. Q4–Q6.

Commenters' views were mixed. Industry commenters generally opposed mandating specific format requirements. They suggested that consumers are not confused by basic information conveyed on periodic statements, and that mandated format requirements would be expensive to implement and could stifle creditors' ability to tailor statements to specific products. Some of these commenters suggested that grouping of terms or fees might be helpful, but cautioned against a total of fees that would not differentiate interest from other charges such as penalty fees (late or over-the-credit-limit, for example). Some consumer group commenters suggested importing format requirements similar to the tabular disclosures for credit card applications and solicitations.

Consumer testing conducted for the Board has shown that targeted proximity requirements on periodic statements tend to improve the effectiveness of cost disclosures for consumers. For the reasons discussed below, the Board proposes several proximity requirements. For example, the proposal would link by proximity the payment due date with the late payment fee and penalty rate that could be triggered by an untimely payment. The minimum payment amount also would be linked by proximity with the new warning required by the Bankruptcy Act about the effects of making such payments on the account. The Board believes grouping these disclosures together would enhance consumers' informed use of credit.

To ensure consumers are alerted to rate increases and other changes that increase the cost of using their account, a summary of key rate and term changes would precede the transactions when an advance notice of a change in term or rate accompanies a periodic statement. Transactions would be grouped by type, and fee and interest charge totals would be located with the transactions. Participants in the consumer testing conducted for the Board tended to review their transactions and to notice fees and interest charges when placed there. The Board notes that some financial institutions presently group transactions by type. Form G–18(A) would illustrate these requirements.

The Board is publishing for the first time forms illustrating front sides of a periodic statement. The Board is publishing forms G–18(G) and G–18(H) to illustrate how a periodic statement might be designed to comply with the requirements of § 226.7. Forms G–18(G) and G–18(H) contain some additional disclosures that are not required by Regulation Z. The forms also present information in some additional formats that are not required by Regulation Z. The Board is publishing the front side of a statement form as a compliance aid.

Consumer testing for the Board indicates that the effectiveness of periodic statement disclosures is improved when certain information is grouped together. The Board seeks comment on any alternative approaches that would provide creditors more flexibility in grouping related information together on the periodic statement.

7(a) Rules Affecting Home-Equity Plans

For HELOCs, creditors are required to comply with the disclosure requirements under proposed § 226.7(a)(1) through (10), including existing rules and guidance regarding the disclosure of finance charges and other charges, which would be combined in a new § 226.7(a)(6). These rules and accompanying commentary are substantively unchanged from current § 226.7(a) through (k). Proposed § 226.7(a) also provides that at their option, creditors offering HELOCs may comply with the requirements of § 226.7(b). The Board understands that some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules.

In technical revisions, the substance of footnotes referenced in § 226.7(d) is moved to proposed § 226.7(a)(4) and comment 7(a)(4)-6.

7(a)(7) Annual Percentage Rate

The Board is proposing two alternative approaches to address concerns about the effective APR. These approaches are discussed in detail in the section-by-section analysis to proposed § 226.7(b)(7). The first approach seeks to improve the effective APR. For HELOCs subject to § 226.5b, creditors would have an option to comply with the new rules or continue to comply with the current rules applicable to the effective APR. This is intended as a temporary measure until the Board reviews comprehensively the rules for HELOCs subject to § 226.5b. The second approach would eliminate the requirement to disclose the effective APR; thus, under this approach, the effective APR would be optional for HELOC creditors pending the Board's review of home-secured disclosure rules.

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

Current comment 7–3 provides guidance on various periodic statement disclosures for deferred-payment transactions, such as when a consumer may avoid interest charges if a purchase balance is paid in full by a certain date. Under the proposal, the substance of comment 7–3, revised to conform to other proposed revisions in § 226.7(b), is proposed as comment 7(b)–1. The Board believes the guidance is unnecessary for HELOCs.

7(b)(2) Identification of Transactions

Proposed § 226.7(b)(2) requires creditors to identify transactions in accordance with rules set forth in § 226.8. The Board proposes to revise and significantly simplify those rules, as discussed in the section-by-section analysis relating to § 226.8 below.

The Board would introduce a format requirement to group transactions by type, such as purchases and cash advances. In consumer testing conducted for the Board, participants found such groupings helpful. Moreover, consumers noticed fees and interest charges more readily when transactions were grouped together, the fees imposed for the statement period were not interspersed among the transactions, and the interest and fees were disclosed in proximity to the transactions. Comment 7(b)(2)–1 would reflect the new requirement. Sample G–18(A) would illustrate the proposal.

7(b)(3) Credits

Creditors are required to disclose any credits to the account during the billing cycle. Creditors typically disclose credits among other transactions. The Board proposes no substantive changes to the disclosure requirements for credits. However, consistent with the format requirements proposed in § 226.7(b)(2), the proposal would require credits and payments to be grouped together. Consumers who participated in testing conducted for the Board consistently identified credits as statement information they review each month, and favored a separation of credits and payments among the transactions.

Current comment 7(c)–2, which permits creditors to commingle credits related to extensions of credit and credits related to non-credit accounts, such as a deposit account, is not proposed under new § 226.7(b)(3). The Board solicits comment on the need for alternatives to the proposed format requirements to segregate transactions and credit, such as when a depository institution provides on a single periodic statement account activity for a consumer's checking account and an overdraft line of credit. Sample G–18(A) would illustrate the proposal. Comment 7(b)(3)–3, as renumbered, is revised for clarity.

7(b)(4) Periodic Rates

Periodic rates. TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in the years. 15 U.S.C. 1637(b)(5); § 226.14(b). The Board is proposing to eliminate, for open-end (not home-secured) plans, the requirement to disclose periodic rates on periodic statements.

The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that proposing the exemption is appropriate. In consumer testing conducted for the Board, consumers indicated they do not use periodic rates to verify interest charges. Consistent with the Board's proposal to not allow periodic rates to be disclosed in the tabular summary on or with credit card applications and disclosures, the Board believes that requiring periodic rates to be disclosed on periodic statements may distract from more important information on the statement, and contribute to information overload. The proposal to eliminate periodic rates from the periodic statement therefore has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit. The Board welcomes comment on this matter.

Labeling APRs. Currently creditors are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Current comment 7(d)–4 permits labels such as ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' or ''corresponding nominal annual percentage rate.'' To promote uniformity, creditors offering open-end (not home-secured) plans would be required to label the annual percentage rate disclosed under proposed § 226.7(b)(4) as ''annual percentage rate.'' In combination with the Board's proposed approach to improve consumers' understanding of the effective APR discussed in the section-by-section analysis to proposed § 226.7(b)(7), it is important that the ''interest only'' APR be uniformly distinguishable from the effective APR that includes interest and fees. Forms G–18(G) and G–18(H) illustrate periodic statements that disclose an APR but no periodic rates.

Rates that ''may be used.'' Currently, comment 7(d)–1 interprets the requirement to disclose all periodic rates that ''may be used'' to mean ''whether or not [the rate] is applied during the cycle.'' For example, rates on cash advances must be disclosed on all periodic statements, even for billing periods with no cash advance activity or balances. The regulation and commentary do not clearly state whether promotional rates, such as those offered for using checks accessing credit card accounts, that ''may be used'' should be disclosed under current § 226.7(d) regardless of whether they are imposed during the period. *See* current comment 7(d)–2. The Board is proposing a limited exception to TILA Section 127(b)(5) to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

Under the proposal, creditors would be required to disclose promotional rates only if the rate actually applied during the billing period. *See* proposed § 226.7(b)(4)(ii). For example, a card issuer may impose a 22 percent APR for cash advances but offer for a limited time a 1.99 percent promotional APR for advances obtained through the use of a check accessing a credit card account. Creditors are currently required to disclose, in this example, the 22 percent cash advance APR on periodic statements whether or not the consumer obtains a cash advance during the previous statement period. The proposal would make clear that creditors are not required to disclose the 1.99 percent promotional APR unless the consumer used the check during the statement period. The Board believes that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception would not apply to HELOCs covered by § 226.5b. The Board requests comment on whether the class of transactions under the proposed exceptions should be tailored more broadly to include HELOCs subject to § 226.5b, and if so, why.

Combining interest and other charges. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. *See* current comment 7(d)–3. As discussed earlier, consumer testing for the Board indicates that participants appeared to understand credit costs in terms of ''interest'' and ''fees,'' and the proposal would require disclosures to distinguish between interest and fees. To the extent consumers associate periodic rates with ''interest,'' it seems unhelpful to consumers' understanding to permit creditors to include periodic rate charges other than interest into the dollar cost disclosed. Thus, guidance about combining periodic rates attributable to interest and other finance charges would be retained for HELOCs in proposed comment 7(a)(4)–3, but would be eliminated for open-end (not home-secured) plans.

A new comment 7(b)(4)–7 would be added to provide guidance to creditors when a fee is imposed, remains unpaid, and accrues interest on the unpaid balance. The comment provides that creditors disclosing fees in accordance with the format requirements of § 226.7(b)(6) need not separately disclose which periodic rate applies to the unpaid fee balance.

In technical revisions, the substance of footnotes referenced in § 226.7(d) is moved to the regulation and comment 7(b)(4)–5.

7(b)(5) Balance on which Finance Charge is Computed

Creditors must disclose the amount of the balance to which a periodic rate was applied and an explanation of how the balance was determined. The Board provides model clauses creditors may use to explain common balance computation methods. 15 U.S.C. 1637(b)(7); current § 226.7(e); Model Clauses G–1, Appendix G. The staff commentary to current § 226.7(e) interprets how creditors may comply with TILA in disclosing the ''balance,'' which typically changes in amount throughout the cycle, on periodic statements.

Amount of balance. The proposal does not change how creditors are required to disclose the amount of the balance on which finance charges are computed. It would, however, permit creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method. Currently, creditors that use a daily balance method are permitted to disclose an average daily balance for the period, provided they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. The Board would retain the rule permitting creditors to disclose an average daily balance but would eliminate the requirement to provide the explanation. Consumer testing conducted for the Board suggests that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they attempted without satisfaction to calculate balances and verify interest charges based on information on the periodic statement, they would call the creditor for assistance.

The section-by-section analysis to § 226.7(b)(6) discusses proposed revisions intended to further consumers' understanding of interest charges, as distinguished from fees. To complement those proposed revisions, the Board would require creditors to refer to the balance as ''balances subject to interest rate,'' for consistency. Forms G–18(G) and 18(H) illustrate this format requirement. For the reasons discussed regarding guidance on disclosing periodic rates, guidance about disclosing balances to which periodic rates attributable to interest and other finance charges are applied would be retained for HELOCs in proposed comment 7(a)(5)–1, but would be eliminated for open-end (not home-secured) plans.

Explanation of balance computation method. The Board is proposing an alternative to providing an explanation of how the balance was determined. Under the proposal, a creditor that uses a balance computation method identified in § 226.5a(g) has two options. The creditor may: (1) Provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain more information from the creditor about how the balance is computed and resulting finance charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would provide a brief explanation of the method. The Board's proposal is guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a balance, and requiring that level of detail appears not to be warranted. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing indicates that consumers call the creditor for assistance when they attempt without satisfaction to calculate balances and verify interest charges.

The Board believes that providing the name of the balance computation method (or a brief explanation, if the name is not identified in § 226.5a(g)), along with a reference to where additional information may be obtained provides essential information in a simplified way, and in a manner consistent with how consumers obtain further balance computation information. The proposal is consistent with the views of some commenters who responded to the December 2004 ANPR and suggested that the Board simplify some of the more complex disclosures not used by most consumers. Current comment 7(e)–6, which refers creditors to guidance in § 226.6 about disclosing balance computation methods would be deleted as unnecessary.

7(b)(6) Charges Imposed

As discussed in the section-by-section analysis to § 226.6, the Board proposes to reform cost disclosure rules for open-end (not home-secured) plans, in part, to ensure that all charges assessed as part of an open-end (not home-secured) plan are disclosed before they are imposed and to simplify the rules for creditors to identify such charges. Consistent with the proposed revisions at account opening, the proposed revisions to cost disclosures on periodic statements are intended to simplify how creditors identify the dollar amount of charges imposed during the statement period.

Consumer testing conducted for the Board indicates that most participants reviewing mock periodic statements could not correctly explain the term ''finance charge.'' The proposed revisions are intended to conform labels of charges more closely to common understanding, ''interest'' and ''fees.'' Format requirements would also help ensure that consumers notice charges imposed during the statement period.

Two alternatives are proposed: One addresses interest and fees in the context of an effective APR disclosure, the second assumes no effective APR is disclosed.

Charges imposed as part of the plan. Proposed § 226.7(b)(6) would require creditors to disclose the amount of any charge imposed as part of an open-end (not home-secured) plan, as stated in § 226.6(b)(1). Guidance on which charges are deemed to be imposed as part of the plan is in proposed § 226.6(b)(1) and accompanying commentary. Although coverage of charges would be broader under the proposed standard of ''charges imposed as part of the plan'' than under current standards for finance charges and other charges, the Board understands that creditors have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as ''finance charges,'' ''other charges,'' or charges that do not fall into either category. Accordingly, the Board understands that creditors already disclose all charges that would be considered ''imposed as part of the plan,'' and it does not expect this proposed change to affect significantly the disclosure of charges on the periodic statement.

Interest charges and fees. For creditors complying with the new proposed cost disclosure requirements, the current requirement in § 226.7(f) to label finance charges as such would be eliminated. *See* current § 226.7(f). Testing of this term with consumers found that it did not help them to understand charges. Instead, charges imposed as part of an open-end (not home-secured) plan would be disclosed under the labels of ''interest charges'' and ''fees.'' Consumer testing supplies evidence that consumers may generally understand interest as the cost of borrowing money over time and characterize other costs—regardless of their characterization under TILA and Regulation Z—as fees (other than interest). The Board's proposal is consistent with this evidence.

TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). This requirement is currently implemented in § 226.7(f), and creditors are given considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. *See* current § 226.7(f) and comments 7(f)–1, –2, and –3. To improve uniformity and promote the informed use of credit, creditors would be required under proposed § 226.7(b)(6)(ii) to itemize finance charges attributable to interest, by type of transaction labeled as such, and would be required to disclose, for the statement period, a total interest charge, labeled as such. Although creditors are not currently required to itemize interest charges by transaction type, creditors often do so. For example, creditors may disclose the dollar interest costs associated with cash advance and purchase balances. Based on consumer testing, the Board believes consumers' ability to make informed decisions about the future use of their open-end plans—primarily credit card accounts—may be promoted by a simply-labeled breakdown of the current interest cost of carrying a purchase or cash advance balance. The breakdown would enable consumers to better understand the cost for using each type of transaction, and uniformity among periodic statements would allow consumers to compare one account with other open-end plans the consumer may have. Under the proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would be identified as fees and would no longer be permitted to be combined with interest costs. *See* proposed comment 7(b)(4)–3.

Current § 226.7(h) requires the disclosure of ''other charges'' parallel to the requirement in TILA Section 127(a)(5) and current § 226.6(b) to disclose such charges at account opening. 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose ''other charges,'' revised § 226.7(b)(6)(iii) would require that other costs be identified consistent with the feature or type, and itemized. The proposal differs from current requirements in the following respect: fees would be required to be grouped together and a total of all fees for the statement period would be required. Currently, creditors typically include fees among other transactions identified under § 226.7(b). In consumer testing, consumers were able to more accurately and easily determine the total cost of non-interest charges when fees were grouped together and a total of fees was given than when fees were scattered among the transactions without a total. (Section 226.7(b)(6)(iii) also would require that certain fees that are included in the computation of the effective APR pursuant to § 226.14 must be labeled either as ''transaction fees'' or ''fixed fees.'' This proposed requirement is discussed in further detail in the section-by-section analysis to § 226.7(b)(7).)

To highlight the overall cost of the credit account to consumers, creditors would disclose the total amount of interest charges and fees for the statement period and calendar year to date. Participants in consumer testing conducted for the Board noticed the year-to-date cost figures and indicated they would find the numbers helpful in making future financial decisions. The Board believes that disclosure of year-to-date totals would better inform consumers about the cumulative cost of their credit plans over a significant period of time. Comment 7(b)(6)–3 would provide guidance on how creditors may disclose the year to date totals at the end of a calendar year.

Proposed § 226.7(b)(6)(iv) in Alternative 1 contains requirements for calculating and disclosing totals for interest and certain fees in connection with the disclosure of the effective APR pursuant to § 226.7(b)(7). These requirements are in addition to the total interest and fee disclosures disclosed in proximity to transactions, and are discussed in further detail in the section-by-section analysis to § 226.7(b)(7).

Format requirements. In consumer testing, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges, itemized and totaled, when they were grouped together with transactions. Some creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic rates. The proposal would not affect creditors' flexibility to provide this information in such summaries. *See* Forms G–18(G) and G–18(H), which illustrate, but do not require, such summaries. However, the Board believes TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided, in a location they routinely review, basic cost information—interest and fees—that enables consumers to compare costs among their open-end plans. The Board proposes that charges required to be disclosed under § 226.7(b)(6)(i) would be grouped together with the transactions identified under § 226.7(b)(2), substantially similar to Sample G–18(A) in Appendix G. Proposed § 226.7(b)(6)(iii) would require non-interest fees to be itemized and grouped together, and a total of fees would be disclosed for the statement period and calendar year to date. Interest charges would be itemized by type of transaction, grouped together, and a total of interest charges would be disclosed for the statement period and year to date. Sample G–18(A) in Appendix G illustrates the proposal.

7(b)(7) Effective Annual Percentage Rate

TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. *15* U.S.C. 1637(b)(6). This rate has come to be known as the ''historical APR'' or ''effective APR.'' (This APR will be referred to as the ''effective APR'' in this section-by-section analysis, and in the regulation and accompanying commentary.) Section 127(b)(6) exempts a creditor from disclosing an effective APR when the total finance charge does not exceed 50 cents for a monthly or longer billing cycle, or the *pro rata* share of 50 cents for a shorter cycle. In such a case, TILA Section 127(b)(5) requires the creditor to disclose only the periodic rate and the annualized rate that corresponds to the periodic rate. *15* U.S.C. 1637(b)(5). When the finance charge exceeds 50 cents, the act requires creditors to disclose the periodic rate but not the corresponding APR. Since 1970, however, Regulation Z has required disclosure of the corresponding APR in all cases. *See* current § 226.7(d). Current § 226.7(g) implements TILA Section 127(b)(6)'s requirement to disclose an effective APR.

The effective APR and corresponding APR for any given plan feature are the same when the finance charge in a period arises only from application of the periodic rate to the applicable balance (the balance calculated according to the creditor's chosen method, such as average daily balance method). When the two APRs are the same, Regulation Z requires that the APR be stated just once. The effective and corresponding APRs diverge when the finance charge in a period arises (at least in part) from a charge not determined by application of a periodic rate and the total finance charge exceeds 50 cents. When they diverge, Regulation Z requires that both be stated.

The following example illustrates the relationship between the effective APR and the corresponding APR in a simple case. A credit cardholder with no balance in the previous cycle takes a cash advance of $100 on the first day of the cycle. A cash advance fee of 3 percent applies (a finance charge of $3), as does a periodic rate of 1½ percent per month on the average daily balance of $100 (a finance charge of $1.50). No other transactions, and no payments, occur during the cycle, which is 30 days. The corresponding APR is 18 percent (1½ percent times 12). To determine the effective APR, first the total finance charge of $4.50 is divided by the balance of $100. This quotient, 4½ percent, is the rate of the total finance charge on a monthly basis. The monthly rate is annualized, or multiplied by 12, to yield an effective APR of 54 percent. Under Regulation Z, the creditor would disclose on the periodic statement both the corresponding APR of 18 percent and the effective APR of 54 percent.

The controversy over the effective APR. The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. 15 U.S.C. 1601(a). There is, however, a longstanding controversy about the extent to which the requirement to disclose an effective APR advances TILA's purposes or, as some argue, undermines them. This controversy has been reflected in such forums as discussions by the Board's Consumer Advisory Council and comments on the ANPR. Q23–Q25. The following discussion seeks to place the controversy over the effective APR in the context of certain objective characteristics of the disclosure.

The effective APR is essentially retrospective, or ''historical.'' An effective APR on a particular periodic statement represents the cost of transactions in which the consumer engaged during the cycle to which that statement pertains. It is not likely, however, that the effective APR for a transaction in a given cycle will predict accurately the cost of a transaction in a future cycle. If any one of several factors is different in the future cycle than it was in the past cycle, such as the balance at the beginning of the cycle or the amount and timing of each transaction and payment during the cycle, then the effective APRs in the two cycles will be different, too.[13] In short, the effective APR is by nature retrospective and idiosyncratic and, therefore, provides limited information about the cost of future transactions.

Consumer groups argue that the information the rate provides about the cost of future transactions, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Industry commenters respond that the cost of a transaction is not usually as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost makes this APR misleading. Commenters generally agree that the effective APR can be ''shocking,'' but they disagree as to whether it conveys meaningful information.

One reason that effective APRs appear high is the assumption built into the disclosure that the borrower paid the balance at the end of the cycle. This assumption tends to make the APR higher, and more volatile, than if a longer repayment period were used. In the example given above, the effective APR on cash advances, 54 percent, is three times the corresponding APR, 18 percent. Moreover, the effective APR would have been 18 percent (the same as the corresponding APR) in the previous cycle if no cash advances had been taken then, and it will fall back to 18 percent in the next cycle if no cash advance is taken then (assuming the rate is fixed). Use of a longer repayment period would, other things being equal, yield a lower, and less volatile, effective APR. A lower APR based on available information about the consumer's expected time to repay might seem more realistic. But its disclosure would require making assumptions about activity in future cycles, such as the timing and amount of future transactions and payments—or it would require assuming that there is to be no activity on the account until the balance is repaid. Such assumptions would often appear arbitrary and unrealistic. Accordingly, Regulation Z has always required that the effective APR be calculated on the premise that payment was made at the end of the cycle. The likelihood that the premise is often wrong accounts, at least in part, for the controversy as to whether the effective APR can supply meaningful information about credit costs.

Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. The dependence of the effective APR on the particular activity in a given cycle means that any given effective APR in any given cycle is not typically a practical shopping tool. Comparing two particular effective APRs for any two cycles on two different accounts is not usually a reliable basis to determine which account costs the consumer more. Moreover, an effective APR for a given month on an existing account cannot be compared reliably to the corresponding APR advertised on a different account, which by definition does not reflect any finance charges imposed in the form of fees. There may be cases in which repeated disclosure of effective APRs in consecutive cycles, as opposed to one effective APR for one cycle, would facilitate shopping. For example, if an account had a periodic rate and a corresponding APR of zero, the effective APRs disclosed on the account might provide the most practical basis for assessing the cost of the account in relationship to other advertised accounts. This example, though, does not appear to be common in today's market.

Although the effective APR is not commonly usable as a shopping tool in itself, consumer group commenters argue that the effective APR promotes credit shopping by encouraging consumers to seek out other sources of credit, especially when the rate reaches levels that ''shock'' consumers. Industry commenters respond, however, that the tendency of the effective APR to exaggerate the cost of credit may lead consumers to make invalid comparisons. They say that disclosure of a high effective APR in a cycle may cause a consumer to discontinue using the account in favor of another account that appears less expensive based on its corresponding APR but is in fact more expensive, because of fixed or minimum charges or other factors.

Supporters of the effective APR also argue that high effective APRs typical for cash advances and balance transfers benefit consumers by discouraging them from engaging in these transactions. Industry commenters respond that consumers do not necessarily benefit if they refrain categorically from a particular kind of credit transaction; depending on the alternatives consumers choose, they may be worse-off rather than better-off. Some of these commenters also argue that discouraging particular kinds of credit transactions is not a valid objective of Regulation Z.

Industry and community group commenters find some common ground in their observations that consumers do not understand the effective APR well. Industry commenters argue from their experience with their customers that consumers do not understand how this APR differs from the corresponding APR, why it is ''so high,'' or which fees it reflects. Creditor commenters say that when their customers call them and express alarm or confusion over the effective APR, the creditors find it difficult, if not impossible, to make the caller understand the disclosure. Nor, they argue, does a consumer find the disclosure any more useful than disclosure of interest and fees in dollars and cents, even if the consumer understands the disclosure. Consumer groups concede that, as implemented today, the effective APR is difficult for consumers to understand, and they support efforts to make it more understandable, such as improved presentation on the periodic statement. Industry commenters expressed doubt that such efforts would be worthwhile.

Industry commenters also claim the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including legal analysis of Regulation Z to determine whether the fee for the new service must be included in the effective APR and software programming if it is included; they are also concerned about litigation risks. Also, responding to telephone inquiries from confused customers and accommodating them (e.g., with fee waivers or rebates) increases operational costs. Costs associated with adverse consumer reactions to the effective APR may influence creditors to take steps to minimize the frequency with which

[13] An example demonstrates how the effective APR depends critically on the timing of transactions during two different cycles. Assume for the sake of simplicity that the transaction amount and beginning balance remain the same in both cycles. In the example discussed above, a cash advance of $100 on the first day of a 30-day cycle yielded an effective APR of 54 percent, three times the corresponding APR of 18 percent. If in a later cycle the consumer were to take the cash advance on the last day of the 30-day cycle, the effective APR would be 36.6 percent, about twice the corresponding APR. (The finance charge produced by the periodic rate would be $.05 (1½ percent times the average daily balance of $3.33). The total finance charge of $3.05 divided by the transaction amount of $100 yields a quotient of 3.05 percent, which is multiplied by 12 to yield an effective APR of 36.6 percent.)

they must disclose it. One such step would be to price credit mostly through a periodic rate rather than fees. Although this effect is difficult to measure, a trade association commenter concedes a policy argument for retaining the effective APR as a hedge against creditors shifting their pricing from periodic rates to transaction-triggered fees and charges.

Like most other industry commenters, however, this same commenter concludes that the effective APR should be eliminated because, for the reasons discussed above, its costs outweigh its benefits. Some industry commenters support replacing the effective APR with enhanced fee disclosures (for example, grouping fees on the statement or summing them for each period or for the year), but many do not. Consumer groups urge the Board not only to retain the effective APR, but to expand it in two respects: (1) Include in the rate all charges, including charges not currently defined as finance charges in Regulation Z; and (2) require creditors to disclose a ''typical effective APR'' (an average of effective APRs) on solicitations and account-opening disclosures.[14]

Consumer research conducted for the Board. It is difficult to measure directly how the effective APR ultimately affects consumers, creditors, and the credit market generally. It is feasible, however, at a minimum, to assess to some degree consumers' awareness and understanding of the disclosure. Such assessments may support inferences about the disclosure's effectiveness.

Accordingly, the Board undertook research, through a consultant, to shed light on consumer awareness and understanding of the effective APR; and on whether changes to the presentation of the disclosure could increase awareness and understanding. A Board consultant used a qualitative testing method, one-on-one cognitive interviews with consumers. Consumers were provided mock disclosures of periodic statements that included effective APRs and asked questions about the disclosure designed to elicit their understanding of the rate. In the first round the statements were copied from examples in the market. For subsequent testing rounds, however, statements were modified in language and design to better convey how the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested.

In most of the rounds, a minority of participants correctly explained that the effective APR for cash advances in the last cycle was higher than the corresponding APR for cash advances because a cash advance fee had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. Results changed at the final testing site, however, when a majority of participants evidenced an understanding that the effective APR for cash advances would be elevated for the statement period when a cash advance fee was imposed during that period, that the effective APR would not be as elevated for periods where a cash advance balance remained outstanding but no fee had been imposed, and that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases.

The form in the final round labeled the rate ''Fee-Inclusive APR'' and placed it in a table separate from the corresponding APR. The ''Fee-Inclusive APR'' table included the amount of interest and the amount of transaction fees. An adjacent sentence stated that the ''Fee-Inclusive APR'' represented the cost of transaction fees as well as interest. Similar approaches had been tried in some of the earlier rounds, except that the effective APR had been labeled ''Effective APR.''

The Board's two alternative proposals. The considerations and data discussed above lead the Board to propose two alternative approaches for disclosing the effective APR: The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach would eliminate the requirement to disclose the effective APR. The evidence of consumer understanding of the effective APR supplied by the qualitative research conducted for the Board is mixed, but it suggests that it may be possible to increase current levels of understanding by modifying the presentation of the rate on the periodic statement. The Board's experience with Regulation Z also suggests that it may be possible to reduce burdens by simplifying computation of the effective APR.

The Board plans to conduct further research into consumer understanding of the effective APR after the comment period has ended. The Board will evaluate this additional research with the research conducted to date, and with other information, including comments received on this proposal, and determine whether the effective APR should be retained with modifications as proposed, eliminated, or addressed in some other way.

1. *First alternative proposal.* Under the first alternative, the Board proposes to impose uniform terminology and formatting on disclosure of the effective APR and the fees included in its computation. *See* proposed §§ 226.7(b)(7)(i), 226.7(b)(6)(iv). This proposal is based largely on a form developed through several rounds of one-on-one interviews with consumers. The Board also proposes under this alternative to revise § 226.14, which governs computation of the effective APR, in an effort to increase certainty about which fees the rate must include. *See* proposed § 226.14(d). *See* section-by-section analysis to § 226.7(a)(7) regarding how the proposal affects HELOCs subject to § 226.5b.

Under proposed § 226.7(b)(7)(i) and Sample Form G–18(B), creditors would label the effective APR ''Fee-Inclusive APR'' and indicate that the Fee-inclusive APRs are the ''APRs that you paid this period when transactions or fixed fees are taken into account as well as interest.'' Creditors would disclose an effective APR for each feature, such as purchases and cash advances, in a tabular format. A composite effective APR for two or more features would no longer be permitted, as it is more difficult to explain to consumers. The effective APR(s) would appear in a table, by feature, with the total of interest, labeled as ''interest charges,'' and the total of the fees included in the effective APR, labeled as ''transaction and fixed charges.'' To facilitate understanding, proposed § 226.7(b)(6)(iii) would require creditors to label the specific fees used to calculate the effective APR either as ''transaction'' or ''fixed'' fees, depending whether the fee relates to a specific transaction; such fees would be disclosed in the list of transactions. If the only finance charges in a billing cycle are interest charges, the corresponding and effective APRs are identical. In those cases, creditors would disclose only the corresponding APRs and would not be required to label fees as ''transaction'' or ''fixed'' fees. These requirements would be illustrated in forms under G–18 in Appendix G, and creditors would be required to use the model or a substantially similar presentation.

To facilitate compliance, the proposed regulation would give specific guidance about how to attribute fees to account

[14] Consumer group comments about a ''typical APR'' disclosure are summarized in the section-by-section analysis to § 226.5a.

features. For convenience and uniformity, two kinds of charges, when used to calculate the effective APR, would be grouped under the purchase feature of the account: (1) Charges that relate to specific purchase transactions; and (2) minimum, fixed and other non-interest charges not related to a specific transaction. *See* proposed § 226.7(b)(6)(iv)(B). If there are purchase features other than the standard purchase feature—such as a promotional purchase feature—then the minimum, fixed or other non-interest charges would be grouped with other charges relating to the balance on the standard purchase feature. *See* proposed comment 7(b)(6)–5. In addition, a minimum charge would be disclosed as a fee, rather than as interest, and it would be grouped together with other fees related to standard purchases and used to calculate the effective APR with respect to the standard purchase feature. *See* proposed comment 7(b)(6)–4.

The proposal also seeks to simplify computation of the effective APR, both to increase consumer understanding of the disclosure and facilitate creditor compliance. New § 226.14(e) would provide a specific and exclusive list of finance charges that would be included in calculating the effective APR.[15] This proposed change is discussed further in the section-by-section analysis to § 226.14.

The Board seeks comment on the potential benefits and costs of the first alternative proposal.

2. *Second alternative proposal.* Under the second alternative proposal, for the reasons discussed in the introduction to the discussion of the effective APR, the effective APR would no longer be disclosed. The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that proposing the exemption is appropriate. Consumer testing suggests that consumers find the current requirement of disclosing an APR that combines rates and fees to be confusing. The proposal would require disclosure of the nominal interest rate and fees in a manner that is more readily understandable and comparable across institutions. It therefore has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for all types of open-end credit. A potentially competing consideration is the extent to which ''sticker shock'' from the effective APR benefits consumers, even if the disclosure is somewhat arbitrary. A second consideration is whether the effective APR is a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of the proposal would outweigh these considerations.

The Board welcomes comment on this matter.

7(b)(9) Address for Notice of Billing Errors

Consumers who allege billing errors must do so in writing. 15 U.S.C. 1666; § 226.13(b). Creditors must provide on or with periodic statements an address for this purpose. *See* current § 226.7(k). Currently, comment 7(k)–2 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. The Board would update comment 7(k)–2, renumbered as comment 7(b)(9)–2, to address notification by e-mail or via a Web site. The comment would provide that the address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(b)(10) Closing Date of Billing Cycle; New Balance

Creditors must disclose the closing date of the billing cycle and the account balance outstanding on that date. As a part of its proposal to implement TILA amendments in the Bankruptcy Act regarding late payment and the effect of making minimum payments, the Board is proposing to require creditors to group together, as applicable, disclosures of related information about due dates and payment amounts, including the new balance. This is discussed in the section-by-section analysis to §§ 226.7(b)(11) and (b)(13) below, and illustrated in Forms G–18(G) and G–18(H) in Appendix G.

7(b)(11) Due Date; Late Payment Costs

TILA Section 127(b)(12), added by Section 1305(a) of the Bankruptcy Act, requires creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The October 2005 ANPR solicited comment on the need for additional guidance on the date to be disclosed under the new rule, and whether the Board should consider any format requirements, such as proximity rules, or the publication of model disclosures. Q97–Q99.

Home-equity plans. The Board intends to implement the late payment disclosure for HELOCs as a part of its review of rules affecting home-secured credit. Creditors offering HELOCs may comply with proposed § 226.7(b)(11), at their option.

Charge card issuers. TILA Section 127(b)(12) applies to ''creditors.'' TILA's definition of ''creditor'' includes card issuers and other persons that offer consumer open-end credit. Issuers of ''charge cards'' (which are typically products where outstanding balances cannot be carried over from one billing

[15] Under the statute, the numerator of the quotient used to determine the historical APR is the total finance charge. *See* Section 107(a)(2), 15 U.S.C. 1606(a)(2). The Board has authority to make exceptions and adjustments to this calculation method to serve TILA's purposes and facilitate compliance. *See* Section 105(a), 15 U.S.C. 1604(a). The Board has used this authority before to exclude certain kinds of finance charges from the historical APR. *See* current § 226.14(c)(2), fn. 33.

period to the next and are payable when a periodic statement is received) are ''creditors'' for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The new disclosure requirement in TILA Section 127(b)(12) is not among those specifically enumerated.

The Board proposes that charge card issuers are not subject to the late payment disclosure requirements contained in the Bankruptcy Act and to be implemented in new § 226.7(b)(11); the new requirement is not specifically enumerated to apply to charge card issuers. In addition, the Board understands that for some charge card issuers, payments are not considered ''late'' for purposes of imposing a fee until a second statement is received without a payment. The Board believes it would be undesirable to encourage consumers who in January receive a statement with the balance due upon receipt, for example, to avoid paying the balance when due because a late-payment fee may not be assessed until mid-February; such a disclosure could cause issuers to change such a practice.

Payment due date. Under the proposal, creditors must disclose the due date for a payment if a late-payment fee could be imposed under the credit agreement. The Board interprets this to be a date that is required by the legal obligation and not to encompass informal ''courtesy periods'' that are not part of the legal obligation and that creditors may observe for a short period after the stated due date before a late-payment fee is imposed, to account for minor delays in payments such as mail delays. Several commenters asked the Board to clarify that in complying with the new late-payment fee disclosure, creditors need not disclose informal ''courtesy periods'' not part of the legal obligation. The Board proposes a comment to this effect. *See* proposed comment 7(b)(11)–1.

Under the statute, creditors must disclose on periodic statements the payment due date or, if different, the earliest date on which the late-payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late-payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements. The Board is concerned, however, that such a disclosure would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. For example, assume a payment is due on March 10 and state law provides that a late payment fee cannot be assessed before March 21. The Board is concerned that highlighting March 20 as the last date to avoid a late payment fee may mislead consumers into thinking that a payment made any time on or before March 20 would have no adverse financial consequences. However, failure to make a payment when due is considered an act of default under most credit contracts, and can trigger higher costs due to interest accrual and perhaps penalty APRs. Particularly in the case of an increased rate that applies to all account balances, the cost of paying late may be significant.

The Board considered additional disclosures on the periodic statement that would more fully explain the consequences of paying after the due date and before the date triggering the late-payment fee, but such an approach appears cumbersome and overly complicated. For those reasons, the Board proposes that creditors must disclose the due date under the terms of the legal obligation, and not a date different than the due date, such as when creditors are required by state or other law to delay for a specified period imposing a late-payment fee when a payment is received after the due date. Consumers' rights under state laws to avoid the imposition of late-payment fees during a specified period following a due date are unaffected by the proposal; that is, in the above example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late-payment fee before March 21. However, the proposal would provide additional protections to consumers by not requiring a disclosure that a late-payment fee will be imposed only after a specified period after the due date, which, if followed, may result in even more costly consequence of an increased penalty rate.

Cut-off time for making payments. As discussed in the section-by-section analysis to § 226.10(b), the Board proposes to require that creditors disclose any cut-off time for receiving payments closely proximate to each reference of the due date, if the cut-off time is before 5 p.m. on the due date. If cut-off times prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), the creditor must state the earliest time without specifying the method to which it applies. This avoids information overload by potentially identifying several cut-off times. Cut-off hours of 5 p.m. or later may continue to be disclosed under the existing rule (including on the reverse side of periodic statements).

Amount of late payment fee; penalty APR. Creditors must disclose the amount of the late-payment fee and the payment due date on periodic statements, under TILA amendments contained in the Bankruptcy Act. The purpose of the new late payment disclosure requirement is to ensure consumers know the consequences of paying late. To fulfill that purpose, the Board proposes that the amount of the late-payment fee must be disclosed in close proximity to the due date. If the amount of the late-payment fee is based on outstanding balances, the proposal would permit the creditor to disclose either the fee that would apply to that specific balance, or the highest fee in the range (e.g., ''up to'' a stated dollar amount).

In addition, the Board believes that an equally (or more) important consequence of paying late is the potential increase in APRs. The extent of rate increases may be substantial, particularly where the increased APR applies to all existing balances, including balances at low promotional rates. Further, the increased APR may apply for a lengthy period of time (although if the creditor imposes a penalty rate, the increase would not become effective for at least 45 days, under the Board's proposal). *See* proposed § 226.9(g). The Board is concerned that if the disclosure refers to only the late payment fee, consumers may overlook the more costly consequence of penalty rates. Therefore, the Board proposes to require creditors to disclose any increased rate that may apply if consumers' payments are received after the due date. If, under the terms of the account agreement, a late payment could result in the loss of a promotional rate, the imposition of a penalty rate, or both, the creditor must disclose the highest rate that could apply, to avoid information overload. Under the proposal, the increased APR would be disclosed closely proximate to the fee and due date, as set forth in proposed § 226.7(b)(13). The Board believes this fulfills Congress's intent to warn consumers about the effects of paying late.

7(b)(12) Minimum Payment

The Bankruptcy Act amends TILA Section 127(b) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. § 1637(b)(11). This disclosure must include: (1) A ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay their actual account balance.

Under the Bankruptcy Act, depository institutions may establish and maintain their own toll-free telephone numbers or use a third party. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directs the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board is directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts; instructional guidance must be provided on how the information contained in the table should be used to respond to consumers' requests. The Board is also required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less. The Federal Trade Commission (FTC) must maintain a toll-free telephone number for creditors that are not depository institutions. 15 U.S.C. 1637(b)(11)(A)–(C).

The Bankruptcy Act provides that consumers who call the toll-free telephone number may be connected to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to be connected to an individual from whom the repayment information may be obtained. Creditors, the Board and the FTC may not use the toll-free telephone number to provide consumers with repayment information other than the repayment information set forth in the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F)–(H).

Alternatively, a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. A creditor that does so also need not include a hypothetical example on its periodic statements, but must disclose the warning statement and the toll-free telephone number on its periodic statements. 15 U.S.C. 1637(b)(11)(J)–(K).

For ease of reference, the Board will refer to the above disclosures about the effects of making only the minimum payment as ''the minimum payment disclosures.''

Proposal to limit the minimum payment disclosure requirements to credit card accounts. Under the Bankruptcy Act, the minimum payment disclosures apply to all open-end accounts (such as credit card accounts, HELOCs, and general-purpose credit lines). The Act expressly states that these disclosure requirements do not apply, however, to any ''charge card'' account, the primary aspect of which is to require payment of charges in full each month.

In the October 2005 ANPR, the Board requested comment on whether certain open-end accounts should be exempted from some or all of the minimum payment disclosure requirements. Q59. Many industry commenters urged the Board to limit the minimum payment disclosure requirements to credit card accounts because they believed that Congress intended the minimum payment disclosures only for such accounts. On the other hand, several consumer groups urged the Board to apply the minimum payment disclosures to all open-end plans because they believed that these disclosures could be useful to consumers for all open-end products, including HELOCs.

The Board is proposing to exempt open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. This exemption would cover, for example, HELOCs (including open-end reverse mortgages), overdraft lines of credit and other general-purpose personal lines of credit.

The debate in Congress about the minimum payment disclosures focused on credit card accounts. For example, Senator Grassley, a primary sponsor of the Bankruptcy Act, in discussing the minimum payment disclosures, stated:

> [The Bankruptcy Act] contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much [consumers] owe and how long it will take to pay off their credit card debts by only making the minimum payment. That is very important consumer education for every one of us.
>
> Consumers will also be given a toll-free number to call where they can get information about how long it will take to pay off their own credit card balances if they only pay the minimum payment. This will educate consumers and improve consumers' understanding of what their financial situation is.

Remarks of Senator Grassley (2005), *Congressional Record* (daily edition), vol. 151, March 1, p. S 1856.

Thus, it appears the principal concern of Congress was that consumers may not be fully aware of the length of time it takes to pay off their credit card accounts if only minimum monthly payments are made. The concern expressed by Congress for credit card accounts does not necessarily apply to other types of open-end credit accounts. These other types of open-end accounts are discussed below.

1. *HELOCs.* Many industry commenters requested that HELOCs be exempted from the minimum payment disclosure requirements. These commenters indicated that most HELOCs have a fixed repayment period specified in the account agreement, so that consumers know from the account agreement the length of the draw period and the length of the repayment period. Nonetheless, several consumer groups urged that HELOCs should not be exempted entirely. They advocated a warning to HELOC consumers that they can pay down the balance faster and save on finance charges if they pay more than the minimum monthly payment required.

Based on the comments received in response to the October 2005 ANPR as well as other information, the Board understands that most HELOCs have a fixed repayment period. Thus, for those HELOCs, consumers could learn from the current disclosures the length of the draw period and the repayment period. *See* current § 226.6(e)(2). The minimum payment disclosures would not appear to provide useful information to consumers that is not already disclosed to them. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers. Thus, the Board proposes to exempt HELOCs from the minimum payment disclosures requirements at this time, but will consider changes to HELOC disclosures as part of the HELOC review.

2. *Open-end reverse mortgages.* An open-end reverse mortgage is a HELOC that is designed to allow consumers to convert the equity in their homes into cash. During an extended ''draw'' period consumers continue living in their homes, can draw on the line of credit to the extent they repay any outstanding balance. The principal and interest become due when the homeowner

moves, sells the home, or dies. Consumers with open-end reverse mortgages would not likely benefit from the minimum payment disclosures, because these disclosures would be based on assumptions about events difficult to predict, such as when the homeowner will move, sell the house or die.

3. *Overdraft lines of credit and other general-purpose personal lines of credit.* In response to the October 2005 ANPR, several industry commenters suggested that the Board exempt overdraft lines of credit from the minimum payment disclosure requirements. For example, one industry trade group indicated that overdraft lines of credit have relatively low credit limits and are not intended as a long term credit option. The commenter also indicated that features and terms of overdraft lines of credit vary widely from institution to institution. Some banks require that an overdraft line of credit be paid in full within a short period after the consumer receives notice that the overdraft line has been used. Other banks permit longer periods of time to repay, but those periods and the size of any minimum payment vary significantly from bank to bank. This commenter indicated that the cost to small institutions of providing the minimum payment disclosures might cause them to stop providing overdraft products.

The Board is proposing to exempt overdraft lines of credit and other general-purpose credit lines from the minimum payment disclosure requirements for several reasons. First, these lines of credit are not in wide use. The 2004 Survey of Consumer Finances data indicates that few families—1.6 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (In terms of comparison, 74.9 percent of families had a credit card, and 58 percent of these families had a credit card balance at the time of the interview.)[16] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the minimum payment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the minimum payment disclosure requirements with respect to overdraft lines of credit and other general-purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board is proposing to exempt overdraft lines of credit and other general-purpose credit lines from the minimum payment disclosure requirements.

7(b)(12)(i) General Disclosure Requirements

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1,000 balance at an interest rate of 17 percent if the consumer makes a ''typical'' 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a ''typical'' 5 percent minimum monthly payment (but a creditor may opt instead to disclose the statutory example for 2 percent minimum payments). The 5 percent minimum payment example must be disclosed by creditors for which the FTC has the authority under the Truth in Lending Act to enforce the act and this regulation. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. 15 U.S.C. 1637(b)(11)(A)–(E).

Wording of the examples. The Bankruptcy Act sets forth specific language for issuers to use in disclosing the applicable hypothetical example on the periodic statement. The Board proposes to amend the statutory language to facilitate consumers' use and understanding of the disclosures, pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). First, the Board proposes to require that issuers disclose the payoff periods in the hypothetical examples in years, rounding fractional years to the nearest whole year, rather than in months as provided in the statute. Thus, issuers would disclose that it would take over 7 years to pay off the $1,000 hypothetical balance, and about 2 years for the $300 hypothetical balance. The Board believes that disclosing the payoff period in years allows consumers to better comprehend the repayment period without having to convert it themselves from months to years. Participants in the consumer testing conducted for the Board reviewed disclosures with the estimated payoff period in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made. Consumers may also appreciate more that the repayment periods are merely estimates.

Second, the statute requires that issuers disclose in the examples the minimum payment formula used to calculate the payoff period. In the $1,000 example above, the statute would require issuers to indicate that a ''typical'' 2 percent minimum monthly payment was used to calculate the repayment period. In the $300 example above, the statute would require issuers to indicate that a 5 percent minimum monthly payment was used to calculate the repayment period. The Board proposes to eliminate the specific minimum payment formulas from the examples. The references to the 2 percent minimum payment in the $1,000 example, and a 5 percent minimum payment in the $300 example, are incomplete descriptions of the minimum payment requirement. In the $1,000 example, the minimum payment formula used to calculate the repayment period is the greater of 2 percent of the outstanding balance or $20. In the $300 example, the minimum payment formula used to calculate the repayment period is the greater of 5 percent of the outstanding balance or $15. In fact, in each example, the hypothetical consumer always pays the absolute minimum ($20 or $15, depending on the example).

The Board believes that including the entire minimum payment formula, including the floor amount, in the disclosure could make the example too complicated and have the unintended consequence of misleading a consumer who reads the language set out in the statute into concluding that the payment is smaller than it actually is. While the disclosures could be revised to indicate that the repayment period in the $1,000 balance was calculated based on a $20 payment, and repayment period in the $300 balance was calculated based on a $15 payment, the Board believes that revising the statutory language in this way changes the disclosure to focus consumers on the effects of making a fixed payment each month as opposed to the effects of making minimum payments. Moreover, disclosing the

[16] Brian Bucks, et al., *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances,* Federal Reserve Bulletin (March 2006).

minimum payment formula is not necessary for consumers to understand the essential point of the examples—that it can take a significant amount of time to pay off a balance if only minimum payments are made. In testing conducted for the Board, the $1,000 balance example was tested without including the 2 percent minimum payment disclosure required by the statute. Consumers appeared to understand the purpose of the disclosure—that it would take a significant amount of time to repay a $1,000 balance if only minimum payments were made. For these reasons, the Board is proposing to require the hypothetical examples without a minimum payment formula.

The proposed regulatory language for the examples is set forth in new § 226.7(b)(12)(i). In addition to the revisions mentioned above, the Board also proposes several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the examples more understandable to consumers.

Adjustments to the APR used in the examples. The Bankruptcy Act specifically authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. In the October 2005 ANPR, the Board requested comment on whether the Board should adjust the APR used in the hypothetical examples, because current APRs on credit cards may be less than the 17 percent APR in the examples. Q62. Commenters were split on whether the Board should adjust the APR in the examples.

The Board is not proposing to adjust the APR used in the hypothetical examples. The Board recognizes that the examples are intended to provide consumers with an indication that it can take a long time to pay off a balance if only minimum payments are made. Revising the APR used in the example to reflect the average APR paid by consumers would not significantly improve the disclosure, because for many consumers an average APR would not be the APR that applies to the consumer's account. Moreover, consumers will be able to obtain a more tailored disclosure of a repayment period based on the APR applicable to their accounts by calling the toll-free telephone number provided as part of the minimum payment disclosure.

7(b)(12)(ii) Estimate of Actual Repayment Period

Under the Bankruptcy Act, a creditor may use a toll-free telephone number to provide consumers with the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. Creditors that choose to give the actual number via the telephone number need not include a hypothetical example on their periodic statements. Instead, they must disclose on periodic statements a warning statement that making the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance and a toll-free telephone number that consumers may use to obtain the actual repayment disclosure. 15 U.S.C. 1637(b)(11)(I) and (K). The Board proposes to implement this statutory provision in new § 226.7(b)(12)(ii)(A).

In addition, the Board proposes to provide that if card issuers provide the actual repayment disclosure on the periodic statement, they need not disclose the warning, the hypothetical example and a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure. *See* proposed § 226.7(b)(12)(ii)(B).

The Board strongly encourages card issuers to provide the actual repayment disclosure on periodic statements, and solicits comments on whether the Board can take other steps to provide incentives to card issuers to use this approach. A recent study conducted by the GAO on minimum payments suggests that certain cardholders would find the actual repayment disclosure more helpful than the generic disclosures required by the Bankruptcy Act. For this study, the GAO interviewed 112 consumers and collected data on whether these consumers preferred to receive on the periodic statement (1) customized minimum payment disclosures that are based on the consumers' actual account terms (such as the actual repayment disclosure), (2) generic disclosures such as the warning statement and the hypothetical example required by the Bankruptcy Act; or (3) no disclosure.[17] According to the GAO's report, in the interviews with the 112 consumers, most consumers who typically carry credit card balances (revolvers) found customized disclosures very useful and would prefer to receive them in their billing statements. Specifically, 57 percent of the revolvers preferred the customized disclosures, 30 percent preferred the generic disclosures, and 14 percent preferred no disclosure. In addition, 68 percent of the revolvers found the customized disclosure extremely useful or very useful, 9 percent found the disclosure moderately useful, and 23 percent found the disclosure slightly useful or not useful. According to the GAO, the consumers that preferred the customized disclosures liked that such disclosures would be specific to their accounts, would change based on their transactions, and would provide more information than generic disclosures. *GAO Report on Minimum Payments*, pages 25, 27.

In addition, the Board believes that disclosing the actual repayment disclosure on the periodic statement would simplify the process for consumers and creditors. Consumers would not need to take the extra step to call the toll-free telephone number to receive the actual repayment disclosure, but instead would have that disclosure each month on their periodic statements. Card issuers (other than issuers that may use the Board or the FTC toll-free telephone number) would not have the operational burden of establishing a toll-free telephone number to receive requests for the actual repayment disclosure and the operational burden of linking the toll-free telephone number to consumer account data in order to calculate the actual repayment disclosure.

The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or

[17] United States Government Accountability Office, *Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary,* 06–434 (April 2006). (The GAO indicated that the sample of 112 consumers was not designed to be statistically representative of all cardholders, and thus the results cannot be generalized to the population of all U.S. cardholders.)

makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes it is appropriate to provide an exemption from the requirement to provide on periodic statements a warning about the effects of making minimum payments, a hypothetical example, and a toll-free telephone number consumers may call to obtain repayment periods, and to maintain a toll-free telephone number for responding to consumers' requests, if the creditor instead provides the actual repayment period on the periodic statement. As noted above, consumer testing indicated that actual repayment period information is more useful to consumers than estimated information. Providing that disclosure on a statement rather than over the telephone provides consumers with easier access to the information. Thus, the proposal has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for credit card accounts. The Board welcomes comment on this matter.

7(b)(12)(iii) Exemptions

As explained above, the Board proposes to require the minimum payment disclosures only for credit card accounts. *See* proposed § 226.7(b)(12)(i). Thus, creditors would not need to provide the minimum payment disclosures for HELOCs (including open-end reverse mortgages), overdraft lines of credit or other general-purpose personal lines of credit. For the same reasons, the Board proposes to exempt these products regardless of whether they can be accessed by a credit card device. Specifically, proposed § 226.7(b)(12)(iii) would exempt the following types of credit card accounts: (1) HELOCs accessible by credit cards that are subject to § 226.5b; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; and (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines. *See* proposed § 226.7(b)(12)(iii)(A)–(C). The Board also proposes to exempt charge cards from the minimum payment disclosure requirements, to implement TILA Section 127(b)(11)(I). 15 U.S.C. 1637(b)(11)(I); *See* proposed § 226.7(b)(12)(iii)(D).

Exemption for credit card accounts with a specific repayment period. In the October 2005 ANPR, the Board requested comment on whether certain open-end accounts should be exempted from some or all of the minimum payment disclosure requirements, such as open-end plans that have a fixed repayment period. Q59. Industry commenters generally supported an exemption for open-end plans that have a fixed repayment period. These commenters indicated that the minimum payment disclosures are not necessary in this context, because the consumer will already know from the account agreement how long it will take to repay the balance.

The Board proposes to exempt credit card accounts where a fixed repayment period for the account is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. *See* proposed § 226.7(b)(12)(iii)(E). The minimum payment disclosures would not appear to provide useful information to consumers that they do not already have in their account agreements. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers.

In order for this proposed exemption to apply, a fixed repayment period must be specified in the account agreement. As proposed, this exemption would include, for example, accounts where the account has been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. *See* proposed comment 7(b)(12)(iii)–1. This exemption would not apply where the credit card may have a fixed repayment period for one credit feature, but an indefinite repayment period on another feature. For example, some retail credit cards have several credit features associated with the account. One of the features may be a general revolving feature, where the minimum payment for this feature does not pay off the balance in a specific period of time. The card also may have another feature that allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), and the minimum payments for that feature will pay off the purchase within a fixed period of time, such as one year. New comment 7(b)(12)(iii)–1 makes clear that the exemption relating to a fixed repayment period does not apply to the above situation, because the retail card account as a whole does not have a fixed repayment period.

Exemption where cardholders have paid their accounts in full for two consecutive months. In the October 2005 ANPR, the Board requested comment on whether the Board should exempt credit card accounts of consumers who typically do not revolve balances or make monthly payments that regularly exceed the minimum. Q60. In response to the October 2005 ANPR, several industry commenters urged the Board to exempt card issuers from providing minimum payment disclosures to consumers who do not regularly make minimum payments. These commenters indicated that excluding non-minimum payers is appropriate because the minimum payment disclosures are less meaningful to those consumers. On the other hand, several consumer groups indicated that the Board should not provide an exemption based on the characteristics or habits of the accountholder, such as whether they typically pay in full. These commenters indicated that the typical behavior of a particular consumer can change quickly, due either to a temporary change in circumstances (a move, a layoff, or a major medical expense) or a permanent change (the death of a spouse or a disability). The consumer groups believed that in these circumstances, it is important that consumers have disclosure about the effects of paying the minimum payments in a timely fashion, before an outstanding balance grows unmanageable.

The Board proposes to provide that card issuers are not required to comply with minimum payment disclosure requirements for a particular billing cycle if a consumer has paid the entire balance in full for the previous two billing cycles. *See* proposed § 226.7(b)(12)(iii)(F). The GAO found in its study on minimum payment disclosures that cardholders who pay their balances in full each month (non-revolvers) were generally satisfied with receiving generic disclosures or none at all, and did not prefer customized disclosures such as actual repayment disclosures. Thirty-seven percent of non-revolvers found the customized disclosure extremely or very useful. Eight percent of non-revolvers found the customized disclosure moderately useful and 55 percent found it slightly or not useful. The GAO indicated that many of the non-revolvers it interviewed who preferred not to receive a customized disclosure explained that they paid their balance in full each month, already understood the consequences of making only minimum payments, and did not need the additional reminder. *See GAO Report on Minimum Payments*, pages 26, 30–31.

Thus, because non-revolvers may not find the minimum payment disclosures very useful or meaningful, the Board proposes to exempt card issuers from the requirement to provide the minimum payment disclosures in a particular billing cycle if a consumer has paid the entire balance in full for the two previous billing cycles. For example, if a consumer paid the entire balance in full for account activity in March and April, the creditor would not be required to provide the minimum payment disclosure for the statement representing account activity in May. The Board believes this approach strikes an appropriate balance between benefits to consumers from the disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the disclosures will receive them. Consumers who carry a balance each month will always receive the disclosure, and consumers who pay in full each month will not. Consumers who sometimes pay their bill in full and sometimes do not will receive the minimum payment disclosures if they do not pay in full the prior two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer will begin receiving the minimum payment disclosures after not paying in full one billing cycle, when the disclosures would appear to be timely. In addition, creditors already typically track whether a consumer has paid their balance in full for two consecutive months. Typically, creditors provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, creditors currently capture payment history for consumers for two billing cycles.

In response to the October 2005 ANPR, one industry commenter indicated that many creditors do not have the processing systems that are capable of selectively pricing the disclosures from month-to-month based on customers' prior payment patterns. Card issuers are not required to take advantage of this exemption from providing the minimum payment disclosures for a particular billing cycle if a consumer has paid the entire balance in full for the previous two billing cycles. Card issuers may provide the minimum payment disclosures to all of its cardholders, even to those cardholders that fall within this exemption. If issuers choose to provide voluntarily the minimum payment disclosures to those cardholders that fall within this exemption, issuers should follow the disclosures rules set forth in § 226.7(b)(12), the accompanying commentary, and Appendices M1–M3 (as appropriate) for those cardholders.

Exemption where balance has fixed repayment period. In response to the October 2005 ANPR, several industry commenters urged the Board to exempt credit cards with fixed payment features from the minimum payment disclosures. As described above, some retail credit cards may have several features on the card. One of those features may allow consumers to make certain types of purchases with the feature (such as furniture purchases, or other large purchases), and the minimum payments for that feature will pay off the purchase within a specific period of time, such as one year. Some commenters indicated that these types of accounts should be exempted from the minimum payment disclosure requirements because consumers would know the repayment period from the account agreement.

The Board proposes to exempt credit card issuers from providing the minimum payment disclosures on periodic statements in a billing cycle where the entire outstanding balance held by consumers in that billing cycle is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to this feature will amortize the outstanding balance within the fixed repayment period. This exemption is meant to cover the retail cards described above in those cases where the entire outstanding balance held by a consumer in a particular billing cycle is subject to a fixed repayment period specified in the account agreement. The minimum payment disclosures would not appear to provide useful information to consumers in this context because consumers would be able to learn from their account agreements how long it would take to repay the balance. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers. *See* proposed comment 7(b)(12)(iii)–2.

Other exemptions. In response to the October 2005 ANPR, several commenters suggested other exemptions to the minimum payment requirements, as discussed below. For the reasons discussed below, the Board is not proposing to include these exemptions.

1. *Exemption for discontinued credit card products.* In response to the October 2005 ANPR, one commenter urged the Board to provide a partial exemption for credit card products for which no new accounts are being opened and for which existing accounts are closed to new transactions. With respect to these products, the commenter urged the Board to exempt issuers of these products from having to place the minimum payment disclosures on the periodic statement, but instead allow issuers to provide these notices in freestanding inserts to the periodic statements. The commenter indicates that the number of accounts that are discontinued are usually very small and the computer systems used to produce the statements for the closed accounts are being phased out.

The Board solicits further comment on why this exemption is needed. What are the costs of redesigning the old computer systems to provide the minimum payment disclosures (that is, the warning statement, the hypothetical example, and the toll-free telephone number) on the periodic statements?

2. *Exemption for credit card accounts purchased within the last 18 months.* In response to the October 2005 ANPR, one commenter urged the Board to provide an exemption for accounts purchased by a credit card issuer. With respect to these purchased accounts, the commenter urged the Board to exempt issuers from placing the minimum payment disclosures on the periodic statement during a transitional period (up to 18 months) while the purchasing issuer converts the new accounts to its statement system. In this situation, the commenter indicated that issuers should be allowed to provide these notices in freestanding inserts to the periodic statements.

The Board solicits further comment on why this exemption is needed. Why could the purchasing issuer not continue to use the periodic statement system and toll-free telephone numbers used by the selling issuer to meet the requirements of the minimum payment disclosures, until the purchased accounts are converted to the purchaser's systems?

3. *Credit card products that do not use declining balance amortization.* One commenter suggested that the Board

exempt from the minimum payment disclosure requirements credit card products that do not use declining balance amortization to calculate the minimum payment. For example, some retail credit cards base their minimum payment formula on the original purchase price or similar amount, rather than on the declining balance. The commenter indicates that these products should be exempt because amortization schedules for these products result in far shorter repayment periods. The Board is proposing not to adopt this exemption because even though the amortization schedules for these products may be shorter than for cards where the minimum payment is calculated on the declining balance, the payoff time may not be so short as to justify an exemption. For example, assume the minimum payment formula is 3.33 percent of the highest balance or $10, whichever is greater. It could still take around 4 years to pay off a $500 balance at a 21.9 percent APR if a consumer only made minimum payments. (For contrast, the repayment period would be around 7 years if the minimum payment was calculated based on the outstanding balance, instead of the highest balance.)

4. *Credit cards with balances of less than $500.* One commenter suggested that the Board exempt credit card accounts from the minimum payment disclosure requirements in cases where the balance on the card is less than $500. This commenter indicated in cases of low balances, the repayment period is fairly short and so the minimum payment disclosure is less needed. The Board is not proposing to exempt these credit card accounts. Depending on how the minimum payment is calculated, it can still take a significant amount of time to pay off a $500 balance if only minimum payments are made. For example, assume the minimum payment is calculated based on the following formula: the greater of (1) 1 percent of the outstanding balance plus interest charges that accrued in the past month; or (2) $10. It could still take around 5 years to repay a $500 balance at a 7.99 percent APR if only minimum payments are made.

7(b)(12)(iv) Toll-free Telephone Numbers

Under Section 1301(a) of the Bankruptcy Act, depository institutions generally must establish and maintain their own toll-free telephone numbers or use a third party to disclose the repayment estimates based on the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F)(i). At the issuer's option, the issuer may disclose the actual repayment disclosure through the toll-free telephone number. The Board also is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less. 15 U.S.C. 1637(b)(11)(F)(ii). The FTC must maintain a toll-free telephone number for creditors other than depository institutions. 15 U.S.C. 1637(b)(11)(F).

The Bankruptcy Act also provides that consumers who call the toll-free telephone number may be connected to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to be connected to an individual from whom the repayment information may be obtained. Unless the issuer is providing an actual repayment disclosure, the issuer may not provide through the toll-free telephone number a repayment estimate other than estimates based on the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F). These same provisions apply to the FTC's and the Board's toll-free telephone numbers as well.

The Board proposes to add new § 226.7(b)(12)(iv) and accompanying commentary to implement the above statutory provisions related to the toll-free telephone numbers. In addition, new comment 7(b)(12)(iv)–3 would provide that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2, as applicable.

7(b)(12)(v) Definitions

As discussed above, Section 1301(a) of the Bankruptcy Act requires the Board to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less. 15 U.S.C. 1637(b)(11)(F)(ii). For ease of reference in the regulation, the Board proposes to define the above depository institutions as ''small depository institution issuers.'' *See* proposed § 226.7(b)(12)(v).

7(b)(13) Format Requirements

As discussed throughout this section-by-section analysis to § 226.7, consumer testing conducted for the Board indicates improved understanding when related information is grouped together. Under the proposal, creditors would group together when a payment is due (due date and cut-off time if before 5 p.m.), how much is owed (minimum payment and ending balance), and what the potential costs are for paying late (late-payment fee, and penalty APR if triggered by a late payment). *See* proposed Samples G–18(E) and G–18(F) in Appendix G. The proposed format requirements are intended to fulfill Congress's intent to have the new late payment and minimum payment disclosures ensure consumers' ability to understand the consequences of paying late or making only minimum payments.

7(b)(14) Change-in-Terms and Increased Penalty Rate Summary for Open-End (Not Home-Secured) Plans

A major goal of its review of Regulation Z's open-end credit rules is to address consumers' surprise at increased rates (and/or fees). In part, the Board is addressing the issue in § 226.9(c) and § 226.9(g) to give more time before new rates and changes to significant costs become effective. *See* proposed § 226.9(c)(2) and § 226.9(g). The proposed new § 226.7(b)(14) is intended to enable consumers to notice more easily changes in their account terms. Increasing the time period to act is ineffective if consumers do not see the change-in-term notice. Consumers who participated in testing conducted for the Board consistently set aside change of term notices that accompanied periodic statements. Research conducted for the Board indicates that consumers do look at the front side of periodic statements and do look at transactions. Therefore, when a change-in-terms notice is provided on or with a periodic statement the proposal would require a summary of key changes to precede transactions. In addition, when a notice of a rate increase due to delinquency or default or as a penalty is provided on or with a periodic statement, the proposal would require this notice to precede transactions. Samples G–20 and G–21 in Appendix G illustrate the proposed format requirement under § 226.7(b)(14) and the level of detail required for the notice under § 226.9(c)(2)(iii) and § 226.9(g)(3). Forms G–18(G) and G–18(H) illustrate the placement of these notices on a periodic statement.

Section 226.8 Identifying Transactions on Periodic Statements

TILA Section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15

U.S.C. 1637(b)(2). The statute calls for the Board to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished. The rules for identifying transactions are implemented in § 226.8, and vary depending on whether: (1) The sales receipt or similar credit document is included with the periodic statement, (2) the transaction is sale credit (purchases) or nonsale credit (cash advances, for example), and (3) the creditor and seller are the ''same or related.'' TILA's billing error protections include consumers' requests for additional clarification about transactions listed on a periodic statement. 15 U.S.C. 1666(b)(2); § 226.13(a)(6).

The Board proposes to update and simplify the rules for identifying sales transactions when the sales receipt or similar document is not provided with the periodic statement (so called ''descriptive billing''), which is typical today. The rules for identifying transactions where such receipts accompany the periodic statement are not affected by the proposal. The proposed changes reflect current business practices and consumer experience, and are intended to ease compliance. Currently, creditors that use descriptive billing are required to include on periodic statements an amount and date as a means to identify transactions, and the proposal would not affect those requirements. As an additional means to identify transactions, current rules contain description requirements that differ depending on whether the seller and creditor are ''same or related.'' For example, a retail department store with its own credit plan (seller and creditor are same or related) sufficiently identifies purchases on periodic statements by providing the department such as ''jewelry'' or ''sporting goods;'' item-by-item descriptions are not required. Periodic statements provided by issuers of general purpose credit cards, where the seller and creditor are not the same or related, identify transactions by the seller's name and location.

The Board proposes to provide additional flexibility to creditors that do not provide sales slips or similar documents with the periodic statement. Under the proposal, all creditors would be permitted to identify sales transactions (in addition to the amount and date) by the seller's name and location. Thus, creditors and sellers that are the same or related could, at their option, identify transactions by a brief identification of goods or services, which they are currently required to do in all cases, or they could provide the seller's name and location for each transaction. Guidance on the level of detail required to describe amounts, dates, the identification of goods, or the seller's name and location remains unchanged.

The Board's proposal is guided by several factors. The standard set forth by TILA for identifying transactions on periodic statements is quite broad. 15 U.S.C. 1637(b)(2). Whether a general description such as ''sporting goods'' or the store name and location would be more helpful to a consumer can depend on the situation. Many retailers permit consumers to purchase in a single transaction items from a number of departments; in that case, the seller's name and location may be as helpful as the description of a single department from which several dissimilar items were purchased. Also, the seller's name and location has become the more common means of identifying transactions, as the use of general purpose cards increases and the number of store-only cards decreases. Under the proposed rule, retailers that commonly accept general purpose credit cards but also offer a credit card account or other open-end plan for use only at their store would not be required to maintain separate systems that enable different descriptions to be provided, depending on the type of card used. Finally, it appears that any consumer benefits would be minimally affected by the proposed change because many retailers permit purchases from different departments to be charged in a single transaction. Moreover, consumers are likely to carefully review transactions on periodic statements and inquire about transactions they do not recognize, such as when a retailer is identified by its parent company on sales slips which the consumer may not have noticed at the time of the transaction. Moreover, consumers are protected under TILA with the ability to assert a billing error to seek clarification about transactions listed on periodic statements, and are not required to pay the disputed amount while the creditor obtains the necessary clarification. Maintaining rules that require more standardization and detail would be costly, and likely without significant corresponding consumer benefit. Thus, the proposal is intended to provide flexibility for creditors without reducing consumer protection.

The Board notes, however, that some retailers offering their own open-end credit plans tie their inventory control systems to their systems for generating sales receipts and periodic statements. In these cases, purchases listed on periodic statements may be described item by item, for example, to indicate brand name such as ''XYZ Sweater.'' This item-by-item description, while not required under current or proposed rules, would remain permissible under the proposal; thus, no operational changes would be required for these retailers.

To implement the approach described above, § 226.8 would be revised as follows. Section 226.8(a)(1) would set forth the proposed rule providing flexibility in identifying sales transactions, as discussed above. Section 226.8(a)(2) would contain the existing rules for identifying transactions when sales receipts or similar documents accompany the periodic statement. Section 226.8(b) is revised for clarity. A new § 226.8(c) would be added to set forth rules now contained in footnotes 16 and 19; and, without references to ''same or related'' parties, footnotes 17 and 20. The substance of footnote 18, based on a statutory exception where the creditor and seller are the same person, would be deleted as unnecessary. The title of the section would be revised for clarity.

The commentary to § 226.8 would be reorganized and consolidated but would not be substantively changed. Comments 8–1, 8(a)–1, and 8(a)(2)–4 would be deleted as duplicative. Similarly, comments 8–6 through 8–8, which provide creditors with flexibility in describing certain specific classes of transactions regardless of whether they are ''related'' or ''nonrelated'' sellers or creditors, would be deleted as unnecessary. Existing comments 8–4 and 8(a)(2)–3, which provide guidance when copies of credit or sales slips accompany the statement, also would be deleted. The Board believes this practice is no longer common, and to the extent sales or similar credit documents accompany billing statements, additional guidance seems unnecessary. Proposed § 226.8(a)(1)(ii) and comments 8(a)–3 and 8(a)–7, which provide guidance for identifying mail or telephone transactions, also would refer to Internet transactions. Proposed comment 8(a)–1 would provide an example of new services that are now commonly purchased from creditors as well as third party service providers (sale credit).

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 sets forth a number of disclosure requirements that apply after an account is opened, including a requirement to provide billing rights statements annually, a requirement to provide at least 15 days advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide finance charge disclosures whenever credit devices or features are added on terms different from those previously disclosed.

With respect to open-end (not home-secured) plans, the Board proposes a number of substantive and technical revisions to § 226.9 and the accompanying commentary, as further described below. The proposal would require certain disclosures to accompany checks that access a credit card account. In addition, the proposal would require creditors to provide a summary table of a limited number of key terms if those terms are changed. The summary table would appear on the first page of the notice or a separate piece of paper. Moreover, if the change-in-terms notice is included with a periodic statement, that summary table would be required to be provided on the front of the first page of the periodic statement, before the list of transactions for the statement period. Also, the Board would require creditors to provide advance notice when a rate is increased due to a consumer's delinquency or default or as a penalty. The Board's proposal also would require creditors to provide 45 days advance notice for changes in terms or increases in rates due to delinquency or default or penalty pricing. Home-equity lines of credit (HELOCs) subject to § 226.5b would not be affected by these proposed revisions. For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

9(a) Furnishing Statement of Billing Rights

TILA Section 127(a)(7) and § 226.9(a) require creditors to mail or deliver a billing error rights statement annually, either to all consumers or to each consumer entitled to receive a periodic statement. 15 U.S.C. 1637(a)(7). (*See* Model Form G–3.) Alternatively, creditors may provide a billing rights statement on each periodic statement. (*See* Model Form G–4.) Both the regulation and commentary would be unchanged under the proposal. However, the Board proposes to revise both Model Forms G–3 and G–4 to improve the readability of these notices. The revised forms are in G–3(A) and G–4(A) of Appendix G. For open-end (not home-secured) plans, creditors may use Model Forms G–3(A) and G–4(A). For HELOCs subject to the requirements of § 226.5b, creditors may use the current Model Forms G–3 and G–4, or the revised forms.

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

Section 226.9(b) requires certain disclosures when a creditor adds a credit device or feature to an existing open-end plan. When a creditor adds a credit feature or delivers a credit device to the consumer within 30 days of mailing or delivering the account-opening disclosures under current § 226.6(a), and the device or feature is subject to the same finance charge terms previously disclosed, the creditor is not required to provide additional disclosures. If the credit feature or credit device is added more than 30 days after mailing or delivering the account-opening disclosures, and is subject to the same finance charge terms previously disclosed in the account-opening agreement, the creditor must disclose that the feature or device is for use in obtaining credit under the terms previously disclosed. However, if the added credit device or feature has finance charge terms that differ from the disclosures previously given under § 226.6(a), then the disclosures required by § 226.6(a) that are applicable to the added feature or device must be given before the consumer uses the new feature or device.

In the December 2004 ANPR, the Board solicited comment as to whether there are formatting tools or navigational aids that could more effectively link information in account-opening disclosures with information provided in subsequent disclosures under § 226.9(b), such as checks that access a credit card account. Q45. Many creditors commented that there would be no benefit to linking subsequent disclosures and account-opening disclosures because many consumers fail to retain the information they receive at account opening. Several creditors commented that improved formatting could improve consumer understanding; however, they were concerned about overly prescriptive requirements that might hinder creditors' ability to tailor their disclosure formats to their products and product terms. Some creditors and consumer groups suggested importing the tabular format used to disclose information in credit card or charge card applications and solicitations to the subsequent disclosure context.

The Board is proposing to retain the current rules set forth in §§ 226.9(b)(1) and 226.9(b)(2) for all credit devices and credit features except checks that access a credit card account. With respect to such checks, the Board is concerned that the current rule in § 226.9(b)(1) may not communicate effectively to the consumer the material terms of checks that access a credit card account, when those checks are mailed or sent to a consumer 30 days or more after the § 226.6 disclosures for the underlying account are provided. The Board agrees with commenters that, after a significant time has passed, it becomes less likely that consumers will still have a copy of the account-opening disclosures, and all relevant change-in-terms notices.

With respect to open-end (not home-secured) plans, the Board is proposing to create a new § 226.9(b)(3) that would require that certain information be disclosed each time that checks that access a credit card account are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures. This provision would apply regardless of whether that information was previously included in the account-opening disclosures. As under the current regulation, no additional disclosures would be required when a creditor provides, within 30 days of the account-opening disclosures, checks that access a credit card account, if the finance charge terms are the same as those that were previously disclosed. HELOCs would not be affected by this proposed revision.

Creditors would be required to provide the new § 226.9(b)(3) disclosures on the front of the page containing the checks that access a credit card account. Specifically, the proposed amendments would require the following key terms be disclosed on the front of the page containing the checks: (1) Any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, that interest will be charged immediately. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the rate that will apply after the discounted initial rate expires. The disclosures must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given. Proposed § 226.9(b)(3) would require that these key terms be disclosed in a tabular format substantially similar to Sample G–19 in Appendix G.

It is the Board's understanding that checks that access a credit card account often are mailed with the periodic statement, so consumers will frequently receive an updated disclosure of the periodic rate in the same envelope as the checks. The Board considered permitting creditors to disclose the rate that applies to a check by means of a reference to the type of applicable periodic rate (*e.g.*, balance transfer or cash advance) accompanied by a reference to the consumer's periodic statement. However, consumer testing conducted for the Board showed that while participants looked at actual numbers on the front of the page of checks, they generally did not notice or pay attention to a cross reference to the periodic statement.

Thus, the Board proposes that the actual APRs and fees applicable to the checks must be disclosed pursuant to § 226.9(b)(3). The Board understands, however, that creditors may engage in risk-based pricing with regard to checks used by consumers, and seeks with this proposal to strike an appropriate balance between meaningful disclosure for consumers and the operational burden on creditors. The proposed rule would require that creditors customize each set of checks sent to reflect a particular consumer's rate. The Board seeks comment on the operational burden associated with customizing the checks, and on alternatives, such as whether providing a reference to the type of rate that will apply, accompanied by a toll-free telephone number that a consumer could call to receive additional information, would provide sufficient benefit to consumers while limiting burden on creditors.

The Board also seeks comment as to whether there are other credit devices or additional features that creditors add to consumers' accounts to which this proposed rule should apply.

The Board has proposed several technical revisions to improve the clarity of § 226.9(b) and the associated commentary.

9(c) Change in Terms

Under § 226.9(c) of Regulation Z, certain changes to the terms of an open-end plan require specific notice of the change. (TILA does not address changes in terms to open-end plans.) The general rule is that creditors must provide 15 days' advance notice of changes in terms required to be included in the account-opening disclosures, with some exceptions, or to increase the minimum payment. *See* current § 226.9(c)(1).

Advance notice currently is not required in all cases. For example, if an interest rate or other finance charge increases due to a consumer's default or delinquency, notice is required, but need not be given in advance. *See* current § 226.9(c)(1); comment 9(c)(1)–3. Furthermore, no change-in-terms notice is required if the specific change is set forth initially by the creditor in the account-opening disclosures. *See* current comment 9(c)–1. For example, some credit card account agreements permit the card issuer to increase the periodic rate if the consumer makes a late payment. Because the circumstances of the increase are specified in advance in the account agreement, the creditor currently need not provide a change-in-terms notice; under current § 226.7(d) the new rate will appear on the periodic statement for the cycle in which the increase occurs.

In the December 2004 ANPR, the Board sought comment as to whether mailing a notice 15 days prior to the effective date of a change in an interest rate provided timely notice to consumers. Q26. The Board also asked whether existing disclosure rules for increases to interest rates and other finance charges were adequate to enable consumers to make timely decisions about how to manage their accounts. Q27. Some commenters noted that consumers are surprised by changes to the terms of their accounts and are not aware that such changes are possible before they take effect, because they do not receive advance notice of those changes and do not remember the information regarding those changes that was contained in the account-opening disclosures. Consumer advocates expressed concern that consumers are not aware when they have triggered rate increases, for example by paying late, and thus are unaware that it might be in their best interest to shop for alternative financing before the rate increase takes effect. Some consumer commenters requested that the Board ban certain practices, such as ''universal default clauses,'' which permit a creditor to raise a consumer's interest rate to the penalty rate if the consumer, for example, makes a late payment on any account, not just on accounts with that creditor.

The Board proposes three revisions to the regulation and commentary to improve consumers' awareness about changes in their account terms or increased rates due to delinquency or default or as a penalty. These revisions also are intended to enhance consumers' ability to shop for alternative financing before such account terms become effective. The proposed revisions generally apply when a creditor is changing terms that must be disclosed in the account-opening summary table under § 226.6(b)(4). *See* section-by-section analysis to § 226.6(b)(4). First, the Board proposes to expand the circumstances under which consumers receive advance notice of changed terms, or increased rates due to delinquency, or for default or as a penalty. Second, the Board proposes to give consumers earlier notice of a change in terms, or for increased rates due to delinquency or default or as a penalty. Third, the Board proposes to introduce format requirements to make the disclosures about changes in terms or for increased rates due to delinquency, default or as a penalty more effective. HELOCs would not be affected by these proposed revisions. The provisions dealing with notices about increased rates due to delinquency, or default or as a penalty are discussed in the section-by-section analysis to § 226.9(g).

Changes in late-payment fees and over-the-credit limit fees. Creditors currently do not have to provide notice of changes to late-payment fees and over-the-credit-limit charges, pursuant to current § 226.9(c)(2). For open-end (not home-secured) plans, the Board's proposal would require 45 days advance notice for changes involving late-payment charges or over-the-credit-limit charges, other than a reduction in the amount of the charges. *See* proposed § 226.9(c)(2)(i). The Board believes that it would be beneficial for consumers to have advance notice of changes to these charges, which can be substantial depending on how a consumer uses his or her account. Late-payment charges and over-the-credit-limit charges can have a large aggregate effect, particularly since they need not be one-time charges, and can be charged month after month if a consumer repeatedly makes late payments or exceeds his or her credit limit. Advance notice regarding changes in the amount of these charges may assist consumers to make better decisions regarding their account usage and regarding when and in what amount they should make payments in order to avoid these potentially recurring charges. This amendment would require that 45 days' advance notice be given only when the amount of a late-payment fee or over-the-credit-limit fee changes, not when such a fee is applied to a consumer's account.

Timing. As discussed above, § 226.9(c)(1) currently provides that whenever any term required to be disclosed under § 226.6 is changed or the required minimum payment is increased, a written notice must be mailed or delivered to the consumer at least 15 days before that change becomes effective. Commenters responding to the December 2004 ANPR expressed a number of opinions about this requirement. One consumer group and a number of individual consumers stated that 15 days is not enough time for a consumer to seek alternative financing, and recommended that consumers be given more time. Some creditors stated that 15 days' advance notice was adequate. Other industry commenters stated that they did not oppose increasing the notice period from 15 days to 30 days, and added that many consumers already receive notice approximately one month before a change in terms becomes effective, because the notices often are sent with periodic statements. A few consumer group commenters recommended 90 days' advance notice for all changes to terms.

In light of the comments received and upon further consideration of this issue, for open-end (not home-secured) plans, the Board proposes to add § 226.9(c)(2)(i) to extend the notice period from 15 days to 45 days. For changes that require advance notice, the Board believes that consumers should have sufficient time, following the notice and before the change becomes effective, to change the usage of their plan or to pursue alternative means of financing their purchases, such as using another credit card, utilizing a home-equity line or installment loan, or shopping for a new credit card.

The Board considered requiring that advance notice of changes in terms be sent 30 days in advance, but concluded that 30 days could be inadequate in some circumstances. The rule governs when notices must be sent, not received by the consumer, so in practice the notice will be received by the consumer with less days remaining to act than the full advance notice period specified in the rule. In light of delays in mail delivery, for example, a notice sent to a consumer 30 days in advance may give a consumer only 25 days to seek alternative financing before the change in terms takes effect. For example, if a consumer wants to shop for another credit card, apply for, open, and transfer a balance from an existing card to a new card, 30 days may be too short a time in some cases. The Board's proposal that notice be sent 45 days in advance should ensure, in most cases, that a consumer will have at least one calendar month following receipt of the notice and before the change in terms takes effect, to seek alternative financing or otherwise mitigate the effect of the new terms.

The proposed 45 day notice period would not apply when the changes affect charges that are not required to be disclosed under § 226.6(b)(4). *See* proposed § 226.9(c)(2)(ii). Specifically, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may either, at its option (1) provide at least 45 days written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. *See* comment 9(c)(2)(ii)–1. Creditors meet the standard to provide the notice at a relevant time if the oral or written notice of a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call. *See* comment 9(c)(2)(ii)–2. The Board believes that for these charges, consumers do not need advance notice of the current amount of the charge.

As discussed in the section-by-section analysis to § 226.5(a)(1)(ii), creditors are permitted under the E–Sign Act to provide in electronic form any TILA disclosure that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. 15 U.S.C. 7001 *et seq.* The Board requests comment on whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive electronic disclosures for the account, such as when a consumer seeks to make a payment online, and the creditor imposes a fee for the service.

Format. Section 226.9 currently contains no restrictions or requirements with regard to how change-in-terms notices are presented or formatted. The consumer testing conducted for the Board explored the usability of current change-in-terms notices. The results of this consumer testing suggest that typical change-in-terms notices are not formatted in a manner that is noticeable and easy for consumers to understand. Consumer testing also suggests that improvements can be made to these notices. A typical change-in-terms notice contains dense blocks of contractual language in a small font, and may be on an accordion-style pamphlet included with the consumer's periodic statement. Consumer testing indicated that consumers may not look at these pamphlets when they are included with periodic statements, and that some consumers have trouble navigating these notices even when their attention is explicitly drawn to the disclosures. These pamphlets generally are not designed to draw attention to the changes because they provide a disclosure of contractual provisions.

For open-end (not home-secured) plans, the Board proposes that creditors be required to provide a summary table of a limited specified number of key terms on the front of the first page of the change-in-terms notice, or segregated on a separate sheet of paper. *See* proposed § 226.9(c)(2)(iii), Sample G–20 in Appendix G. Creditors would be required to utilize the same headings as in the account-opening tables in Model Form G–17(A) and Samples G–17(B) and G–17(C) in Appendix G. If the change-in-terms notice were included with a periodic statement, a summary table would be required to appear on the front of the periodic statement, preceding the list of transactions for the period. *See* §§ 226.7(b)(14), 226.9(c)(2)(iii).

The Board believes that requiring a tabular summary of the key terms of the consumer's account would make change-in-terms notices more useful to consumers by highlighting those terms that may be of most interest to them. Based on consumer testing conducted for the Board, when a summary of key terms was included on change-in-terms notices tested, consumers tended to read the notice and appeared to understand better what key terms were being changed than when a summary was not included.

The proposal also would require that creditors provide other information in the change-in-terms notice, specifically (1) a statement that changes are being made to the account; (2) a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt out right provided in the notice, if applicable; (3) the date the changes to terms described in the summary table will become effective; (4) if applicable, an indication that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice; and (5) if the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate applies to the consumer's account, the new rate described in the notice does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. This information must be placed directly above the summary of key changes described above. This information is intended to give context to the summary of key changes.

With respect to the reference to a right to opt out of the changes, the Board is not requiring that creditors provide such an opt out right. State law or other applicable laws may provide consumers with a right to opt out of certain changes. If a consumer has the right to opt out of the changes in the notice, a creditor must include a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt out right provided in the notice, if applicable.

Reduction in credit limit. Under Regulation Z, a creditor generally may decrease a consumer's credit limit without providing any notice, except with regard to HELOCs. As a result, there could be situations where a consumer may exceed his or her credit limit without realizing it, potentially triggering late-payment fees and penalty pricing. Under new § 226.9(c)(2)(v), for open-end (not home-secured) plans, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Under the proposal, notice must be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased. The Board and other federal banking agencies in the past have received a number of complaints from consumers who were not notified when their credit limits were decreased, and were surprised at the subsequent imposition of an over-the-credit-limit fee. The Board is not proposing that creditors may not reduce a consumer's credit limit. The Board recognizes that creditors have a legitimate interest in mitigating the risk of loss when a consumer's creditworthiness deteriorates, and that a consumer's creditworthiness can deteriorate quickly. Therefore, the Board's proposal would simply require that a creditor provide a notice that it has reduced or will be reducing a consumer's credit limit 45 days before imposing any fee or penalty rate for exceeding that new limit. This proposed amendment would apply only when the over-the-credit-limit fee is imposed solely as a result of a reduction in the credit limit; if the over-the-credit-limit fee would have been charged notwithstanding the reduction in a credit limit, no advance notice would be required. This provision is not intended to permit creditors to provide a general notice at account opening that a consumer's credit limit may change from time to time; rather, the notice should be sent with regard to a specific credit limit reduction that has occurred or will be occurring.

Rules affecting home-equity plans. The Board proposes at the present time to retain in proposed § 226.9(c)(1), without intended substantive change, the current rules regarding the circumstances, timing, and content of change-in-terms notices for HELOCs. These rules will be reviewed in the Board's upcoming review of the provisions of Regulation Z addressing closed-end and open-end (home-secured) credit.

The Board is aware that the current change-in-terms rules, which have applicability both to HELOCs and open-end (not home-secured) credit, address several types of changes in terms that are impermissible for HELOCs subject to § 226.5b. Section 226.5b imposes substantive restrictions on which terms of HELOCs may be changed, and in retaining the current change-in-terms rules for HELOCs, the Board does not intend to amend or in any way change the substantive restrictions imposed by § 226.5b. Accordingly, the Board proposes to make several deletions in proposed § 226.9(c)(1) and the related commentary with respect to HELOCs. For example, the Board proposes deleting in new comment 9(c)(1)–1 the requirement that notice ''be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase,'' because such a contractual term would be prohibited under § 226.5b.

The Board welcomes comment on whether there are any remaining references in § 226.9(c)(1) and the related commentary to changes in terms that would be impermissible for open-end (home-secured) credit pursuant to § 226.5b.

9(e) Disclosures Upon Renewal of Credit or Charge Card

TILA Section 127(d), which is implemented in § 226.9(e), requires card issuers that assess an annual or other periodic fee, including a fee based on activity or inactivity, on a credit card account of the type subject to § 226.5a to provide a renewal notice before the fee is imposed. 15 U.S.C. 1637(d). The creditor must provide disclosures required for credit card applications (although not in a tabular format) and must inform the consumer that the renewal fee can be avoided by terminating the account by a certain date. The notice must generally be provided at least 30 days or one billing cycle, whichever is less, before the renewal fee is assessed to the account. However, there is an alternative delayed notice procedure where the fee can be assessed; the fee must be reversed if the consumer terminates the account provided the consumer is given notice.

Creditors are given considerable flexibility in the placement of the disclosures required under § 226.9(e). For example, the notice can be preprinted on the periodic statement, such as on the back of the statement. *See* § 226.9(e)(3) and comment 9(e)(3)–2. However, creditors that place any of the disclosures on the back of the periodic statement must include a reference to those disclosures under § 226.9(e)(3). To aid in compliance, a model clause that may, but is not required to, be used is proposed for creditors that use the delayed notice method. *See* proposed comment 9(e)(3)–1.

Comment 9(e)–4, which addresses accuracy standards for disclosing rates on variable rate plans, would be revised, for the same reasons and consistent with the proposed accuracy standard for account-opening disclosures. *See* section-by-section analysis to § 226.6(b)(2)(ii)(G).

Other proposed changes to § 226.9(e) are minor with no intended substantive change. For example, footnote 20a, dealing with format, is deleted as unnecessary. The proposed reorganization of § 226.5a is intended, in part, to separate more clearly content and format requirements in that section.

Nonetheless, to avoid any possible confusion, comment 9(e)–2, which generally repeats footnote 20a, would be retained.

9(g) Increase in Rates Due to Delinquency or Default or Penalty Pricing

As discussed above with respect to § 226.9(c), in the December 2004 ANPR, the Board asked whether existing disclosure rules for increases to interest rates and other finance charges were adequate to enable consumers to make timely decisions about how to manage their accounts. Q27. Consumer advocates expressed concern that consumers are not aware when they have triggered rate increases, for example by paying late, and thus are unaware that it might be in their interest to shop for alternative financing before the rate increase takes effect. Some consumer commenters requested that the Board ban certain practices, such as ''universal default clauses,'' which permit a creditor to raise a consumer's interest rate to the penalty rate if the consumer defaults on any accounts, not just on accounts with that creditor.

The Board is not proposing at the present time to prohibit universal default clauses or similar practices. Instead, as discussed in the section-by-section analysis to § 226.5a, the Board's proposal seeks to improve the effectiveness of the disclosures given to consumers regarding the conditions in which penalty pricing will apply. In addition, the Board seeks to improve the ability of consumers to use the disclosures given to them by proposing that disclosures be provided prior to the application of penalty pricing to their accounts. To this end, with respect to open-end (not home-secured) plans, the Board's proposed rule would add § 226.9(g)(1) to require creditors to provide 45 days advance notice when a rate is increased due to a consumer's delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. This notice would be required even if, as is currently the case, the creditor specifies the penalty rate and the specific events that may trigger the penalty rate in the account-opening disclosures.

Neither Regulation Z nor TILA defines what a ''default'' is, and the Board is aware that credit agreements of some creditors permit penalty pricing based on a single late payment by the consumer to that creditor. The Board is concerned that the imposition of penalty pricing can come as a costly surprise to consumers who are not aware of, or do not understand, what behavior is considered a ''default'' under their agreement. As discussed in the section-by-section analysis to § 226.5a, consumer testing conducted for the Board indicated that some consumers do not understand what factors can give rise to penalty pricing, such as the fact that one late payment may constitute a ''default.'' Moreover, when penalty pricing is imposed, it may apply to all of the balances on a consumer's account and often applies to balances for several months or longer. Penalty rates can be more than twice as much as the consumer's normal rate on purchases; for example, default rates in excess of 30 percent are not uncommon.

The Board believes that the way to address penalty pricing is through improved disclosures regarding the conditions under which penalty pricing may be imposed. In part, the Board is proposing, in connection with the disclosures given with credit card applications and solicitations and at account opening, to enhance disclosures about penalty pricing and revise terminology to address consumer confusion regarding the meaning of ''default.'' However, in light of the relatively low contractual threshold for rate increases based on consumer delinquency, default or as a penalty, the Board believes that consumers also would benefit from advance notice of these rate increases, which they otherwise may not expect. Advance notice would give consumers an opportunity to shop for alternate sources of credit, pay down account balances before the rate increase takes effect, or contact the card issuer to rectify any errors before penalty rates are imposed. To make this opportunity viable, the Board is proposing that the notice be provided at least 45 days before the increase takes effect. The Board requests comment on whether a shorter time period, such as 30 days' advance notice, would be adequate notice for consumers whose interest rates are being increased due to default or delinquency, or as a penalty.

The proposed rule would impose a de facto limitation on the implementation of contractual terms between a consumer and creditor, in that creditors would no longer be permitted to provide for the immediate application of penalty pricing upon the occurrence of certain events specified in the contract. The Board believes that this delay in implementing contract terms is appropriate in light of the potential benefit to consumers. Many consumers are likely unaware of the events that will trigger such pricing. The account-opening disclosures may be provided to the consumer too far in advance for the consumer to recall the circumstances that may cause his or her rates to increase. In addition, the consumer may not have retained a copy of the account-opening disclosures and may not be able to effectively link the information disclosed at account opening to the current repricing of his or her account.

The Board notes that this advance notice provision does not, in any manner, limit the contractual ability of creditors to establish the events that trigger penalty pricing, or to establish the rates that apply for such events. The Board also notes that use of this sort of de facto delay in implementing contract terms has precedent in Regulation Z. For example, since 1988, § 226.20(c) has provided that 25 days' advance notice must be given for certain increases in the payment for an adjustable rate mortgage, even if the circumstances of the increase are specified in advance in the contract.

Under the proposed rule, creditors would retain the ability to mitigate risk by freezing credit accounts or lowering the credit limit without providing advance notice (subject to proposed § 226.9(c)(2)(v) discussed above, which addresses over-the-credit-limit fees or penalty rates). Thus, creditors would be able to effectively mitigate risk on accounts that are delinquent or in default notwithstanding the fact that they would be required to provide a notice 45 days before increasing the rate.

The rule also would not require that 45 days' advance notice be given for certain changes made in accordance with the contract, provided that such adjustment is not due to delinquency, default or as a penalty. For example, if an employee offers an open-end plan with discounted rates to its employees, the employer would not be required to give a former employee 45 days' advance notice before increasing the rate on that individual's account from the preferential employees' rate to the standard rate, provided that the rate increase was set forth in the account agreement.

Disclosure content and format. With respect to open-end (not home-secured) plans, under the Board proposal, if a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide a notice with the following information: (1) A statement that the delinquency or default rate or penalty rate has been triggered, as applicable; (2) the date as of which the delinquency or default rate or penalty rate will be applied to the account, as applicable; (3) the circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period; and (4) a statement indicating to which balances on the account the delinquency or default rate or penalty rate will be applied, as applicable. *See* proposed § 226.9(g)(3)(i). In consumer testing conducted for the Board, some participants did not appear to understand that penalty rates can apply to all of their balances, including existing balances. Some participants also did not appear to understand how long a penalty rate could be in effect. Without information about the balances to which the penalty rate applies and how long it applies, consumers might have difficultly determining whether they should shop for another card or pursue alternate sources of financing. Consumers also may consider the duration of penalty pricing when shopping for alternative sources of credit which would enhance their ability to make prudent decisions.

If the notice regarding increases in rates due to delinquency, default or penalty pricing were included on or with a periodic statement, this notice must be in a tabular format. Under the proposal, the notice also would be required to appear on the front of the periodic statement, preceding the list of transactions for the period. *See* proposed §§ 226.7(b)(14), 226.9(g)(3)(ii)(A). If the notice is not included on or with a periodic statement, the information described above must be disclosed on the front of the first page of the notice. *See* § 226.9(g)(3)(ii)(B).

Section 226.10 Prompt Crediting of Payments

Section 226.10, which implements TILA Section 164, generally requires a creditor to credit to a consumer's account a payment that conforms to the creditor's instructions (also known as a conforming payment) as of the date of receipt, except when a delay in crediting the account will not result in a finance or other charge. 15 U.S.C. 1666c; § 226.10(a). Section 226.10 also requires a creditor that accepts a non-conforming payment to credit the payment within five days of receipt. *See* § 226.10(b). The Board has interpreted § 226.10 to permit creditors to specify cut-off times indicating the time when a payment is due, provided that the requirements for making payments are reasonable, to allow most consumers to make conforming payments without difficulty. *See* comments 10(b)–1 and –2. Pursuant to § 226.10(b) and comment 10(b)–1, if a creditor imposes a cut-off time, it must be disclosed on the periodic statement; many creditors put the cut-off time on the back of statements.

The December 2004 ANPR solicited comment regarding the cut-off times used currently by most issuers for receiving payments, whether cut-off times differ based on the type of payment (e.g., check, EFT, telephone, or Internet), and whether the operating times of third party processors differ from those of creditors. Q47–Q48, Q50. The December 2004 ANPR also requested comment regarding the adequacy and clarity of current disclosures of payment due dates and cut-off times, and asked whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time. Q49, Q51.

Disclosure of cut-off times. In response to the December 2004 ANPR, the Board received a number of comments describing issuers' current practices regarding cut-off times. The majority of industry commenters noted that they do set cut-off times that are in the early or mid-afternoon, but that cut-off times may differ based on the means by which a consumer makes his or her payment, with telephone and Internet payments often having later cut-off times than payments made by mail. These industry commenters argued that current disclosure of these cut-off times is clear. Consumer groups and consumers commented that the majority of banks now set a cut-off time on payment due dates and that these cut-off times are a problem because they could result in a due date that is one day earlier in practice than the date disclosed. Consumer groups expressed particular concern about cut-off times because they believe that issuers simultaneously may be decreasing the time period between the end of the statement period and the time when the payment is due.

Almost all industry comments opposed the Board's suggestion to require creditors to credit payments as of the date they are received, regardless of the time, noting that issuers need flexibility to work with external vendors and that creditors' internal processes and systems will to some extent dictate the timing of payment crediting. Consumer and consumer group comments proposed a rule that would require banks to consider the postmark to be the day the payment is received.

The Board is not proposing to require a minimum cut-off time. Instead, as discussed above, the Board is proposing, in what would be new § 226.7(b)(11), to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments near the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. The Board believes that the disclosure-based approach may benefit consumers without imposing an unreasonable operational burden on creditors. Consumers would be able to make better decisions about when to make payments in order to avoid late-payment fees and default rates if earlier cut-off times such as 12:00 p.m. were more prominently disclosed on the periodic statement. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would require that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date. *See* proposed § 226.7(b)(11). HELOCs would not be affected by the disclosure rule in § 226.7(b)(11).

Receipt of electronic payments made through a creditor's Web site. The Board also proposes to add an example to comment 10(a)–2 that states that for payments made through a creditor's Web site, the date of receipt is the date as of which the consumer authorizes the creditor to debit that consumer's account electronically. Industry comments to the December 2004 ANPR stated that most credit card payments are still received by mail. Nevertheless, the Internet is an increasingly utilized resource for making credit card payments and for receiving information about accounts. Unlike payments delivered by mail, payments made via a creditor's Web site may be received almost immediately by that creditor.

The proposed comment would refer to the date on which the consumer authorizes the creditor to effect the electronic payment, not the date on which the consumer gives the instruction. The consumer may give an advance instruction to make a payment and some days may elapse before the payment is actually made; accordingly, comment 10(a)–2 would refer to the date on which the creditor is authorized to debit the consumer's account. If the consumer authorized an immediate payment, but provided the instruction after a creditor's cut-off time, the relevant date would be the following business day. For example, a consumer may go online on a Sunday evening and instruct that a payment be made; however, the creditor could not transmit the request for the debit to the consumer's account until the next day, Monday. Under proposed comment 10(a)–2 the date on which the creditor was authorized to effect the electronic payment would be deemed to be Monday, not Sunday. Proposed comment 10(b)–1.i.B would clarify that the creditor may, as with other means of payment, specify a cut-off time for an electronic payment to be received on the due date in order to be credited on that date. The Board solicits comment regarding the incidence of, and types of, any delays that may prevent creditors or their third party processors from receiving electronic payments on the date on which the creditor is authorized to effect the payment.

The Board considered expanding this comment to cover electronic payments received by other means (e.g., if the consumer authorizes a payment to his deposit account-holding bank's Web site), because it is likely that such electronic payments made through such parties also may be received by the creditor on the same day that they are authorized. However, it could be difficult for a creditor to monitor when a consumer gives a third party an instruction to send a payment, and, in addition, the creditor has no direct control over how long it takes the third party to process that instruction. As a result, the Board's proposed clarification of comment 10(a)–2 is limited to electronic payments effected through the creditor's own Web site, over which the creditor has control.

Promotion of payment via the creditor's Web site. The Board also proposes to update the commentary to clarify that if a creditor discloses that payments can be made on that creditor's Web site, then payments made through the creditor's Web site will be considered conforming payments for purposes of § 226.10(b). Many creditors now permit consumers to make payments via their Web site. Payment on the creditor's Web site may not be specified on or with the periodic statement as conforming payments, but it may be promoted in other ways, such as in the account-opening agreement, via e-mail, in promotional material, or on the Web site itself. It would be reasonable for a consumer who receives materials from the creditor promoting payment on the creditor's Web site to believe that it would be a conforming payment and credited on the date of receipt. Therefore, the Board proposes to amend comment 10(b)–2 to clarify that if a creditor promotes that it accepts payments via its Web site (such as disclosing on the Web site itself or on the periodic statement that payments can be made via the Web site), then it is considered a conforming payment for purposes of § 226.10(b).

Third party processors. With regard to third party processors, industry commenters noted that current practice is that payments received by a third party processor are treated as if they were received directly by the creditor, and that no further clarification is necessary. Accordingly, the Board is not currently proposing any amendments to specifically address third party processors.

Section 226.11 Treatment of Credit Balances; Account Termination

11(a) Credit Balances

TILA Section 165, implemented in § 226.11, sets forth specific steps that a creditor must take to return any credit balance in excess of $1 on a credit account, including making a good faith effort to refund any credit balance remaining in the consumer's account for more than six months. 15 U.S.C. 1666d. The substance of § 226.11 would remain unchanged; however, the commentary would be revised to provide that a creditor may comply with this section by refunding any credit balance upon receipt of a consumer's oral or electronic request. *See* proposed comment 11(a)–1. In addition, the Board proposes to move the current rules in § 226.11 to a new paragraph (a), with the commentary renumbered accordingly, and to add a new paragraph (b) which implements the account termination prohibition for certain open-end accounts in Section 1306 of the Bankruptcy Act (further discussed below). *See* TILA Section 127(h); 15 U.S.C. 1637(h). The section title would be amended to reflect the new subject matter.

11(b) Account Termination

TILA Section 127(h), added by the Bankruptcy Act, prohibits an open-end creditor from terminating open-end accounts for certain reasons. Creditors cannot terminate an open-end plan before its expiration date solely because the consumer has not incurred finance charges on the account. The prohibition does not prevent a creditor from terminating an account for inactivity in three or more consecutive months. The October 2005 ANPR solicited comment on the need for additional guidance, such as when an account ''expires'' and when an account is ''inactive.'' Q106–Q108.

The Board proposes to implement TILA Section 127(h) in new § 226.11(b). The general rule is stated in § 226.11(b)(1) and mirrors the statute; the prohibition would apply to all open-end plans.

Commenters expressed differing views on how the Board might interpret ''expiration date.'' Some suggested using the expiration date on credit cards as the date the account is deemed to expire. Others noted that while cards may expire from time to time, the underlying open-end plans commonly do not have maturity or expiration dates. These commenters were concerned that if an account were deemed to ''expire'' when a credit card's expiration date occurs, new account-opening disclosures would be required for the account to continue. The Board believes that Congress did not intend such a result. Therefore, comment 11(b)(1)–1 would clarify that the underlying credit agreement, not the credit card, determines if there is a stated expiration (maturity) date. Creditors offering accounts without a stated expiration date could not terminate those accounts solely because the consumer does not incur finance charges on the account.

Under the proposal, a new § 226.11(b)(2) would be added to provide that the new rule in § 226.11(b)(1) does not prevent creditors from terminating an account under an open-end plan (with or without an expiration date) that is inactive for three consecutive months. Commenters were split on the need for guidance on an ''inactive'' account. Of those that suggested guidance, commenters generally concurred that ''activity'' includes purchases or cash advances, for example. But commenters disagreed whether an account with an outstanding balance was ''active.'' Because finance charges are likely to accrue on balances remaining after the end of a grace period if any, the Board believes the Congress was addressing situations where no finance charges were accruing due to inactivity. Therefore, proposed § 226.11(b)(2) would provide that an account is inactive if there has been no extension of credit (such as by purchase, cash advance, or balance transfer) and the account has no outstanding balance.

Section 226.12 Special Credit Card Provisions

Section 226.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, and cardholder rights to assert merchant claims and defenses against the card issuer. The proposal would, among other things, provide additional guidance on the rules on unauthorized use and the rights of cardholders to assert claims or defenses involving a merchant against the card issuer (consumer claims with merchants) and update the section to address Internet transactions.

12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642. Existing comment 12(a)(2)–5, the ''one-for-one rule,'' interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted credit card. The proposal would leave § 226.12(a) and the accompanying commentary generally unchanged, except that the text of footnote 21 defining the term ''accepted credit card'' would be moved to new comment 12(a)–2.

In 2003, Board staff revised the commentary to § 226.12(a) to allow card issuers to replace an accepted credit card with more than one card, subject to certain conditions, including the limitation that the consumer's total liability for unauthorized use with respect to the account could not increase with the issuance of the additional renewal or substitute card(s). See comment 12(a)(2)–6; 68 FR 16,185; April 3, 2003. Card issuers could thus, for example, issue credit cards using a new format or technology to existing accountholders, even though the new card is intended to supplement rather than replace the traditional card. In the December 2004 ANPR, the Board solicited comment as to whether it should consider revising § 226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions, including that the additional cards be sent unactivated. Q46.

Consumer groups stated that additional credit cards should only be sent if the consumer specifically requests such cards, citing identity theft concerns if issuers were permitted to send out credit cards without any advance warning or notice. One consumer group suggested that the Board require that consumers be notified in writing or by phone before additional cards are sent. Industry commenters strongly encouraged the Board to amend the regulation to permit the unsolicited issuance of additional cards on existing accounts even when a previously accepted card is not being replaced. These industry commenters observed that the current constraints on distributing new types of credit cards potentially impeded industry innovation in providing more convenient methods for consumers to access their accounts. Industry commenters also contested the notion that sending additional cards on an unsolicited basis would increase the risk of identity theft because, in their view, providing an additional card presents no greater risk than sending the first card, which the consumer has requested, or a renewal card, which consumers often would not know when to expect. Industry commenters also noted that allowing the unsolicited issuance of credit cards outside the context of a renewal or substitution would not expose consumers to greater liability for unauthorized transactions given the contemplated condition that liability for unauthorized use on the card account may not increase with the issuance of the additional card.

At this time, the Board does not propose to amend § 226.12(a) and the one-for-one rule to allow the unsolicited issuance of credit cards outside the context of a renewal or substitution of an accepted access device. Based on current card issuer practices, the Board understands that some issuers may be unable to require separate activation procedures for access devices on the same credit card account. As a result, additional cards sent on an unsolicited basis outside the context of a renewal or substitution might be sent in activated form, which could cause considerable harm to consumers. Even if the card issuer were not permitted to impose any additional liability on the consumer for unauthorized use, consumers would nevertheless still suffer the inconvenience of refuting unwarranted claims of liability.

12(b) Liability of Cardholder for Unauthorized Use

TILA Section 133(a) limits a cardholder's liability for an unauthorized use of a credit card to no more than $50 for transactions that occur prior to notification of the card issuer that an unauthorized use has occurred or may occur as the result of loss, theft or otherwise. 15 U.S.C. 1643. Before a card issuer may impose liability for an unauthorized use of a credit card, it must satisfy certain conditions: (1) the card must be an accepted credit card; (2) the issuer must have provided adequate notice of the cardholder's maximum liability and of the means by which the issuer may be notified in the event of loss or theft of the card; and (3) the issuer must have provided a means to identify the cardholder on the account or the authorized user of the card. The statutory provisions on unauthorized use are implemented in § 226.12(b) of the regulation. The Board is proposing a number of revisions that would clarify the scope of the provision and update the regulation to reflect current business practices. The proposed revisions also would provide guidance on the relationship between the unauthorized use provision and the billing error provisions in § 226.13.

Scope. The definition of ''unauthorized use'' currently found in footnote 22 would be moved into the regulation in new § 226.12(b)(1)(i). The definition provides that unauthorized use is use of a credit card by a person who lacks ''actual, implied, or apparent authority'' to use the credit card. Comment 12(b)(1)–1 further clarifies that whether such authority exists must be determined under state or other law. Commenters were asked in the December 2004 ANPR about whether there was a need to revise any of the substantive protections for open-end credit accounts. Q43. Some commenters urged the Board to consider adopting a provision similar to the existing staff commentary under Regulation E (Electronic Fund Transfer Act) to address circumstances where a consumer has furnished an access device to a person who has exceeded the authority given. The proposal would add a new comment 12(b)(1)–3 to clarify that if a cardholder furnishes a credit card to another person and that person exceeds the authority given, the cardholder is liable for that credit transaction unless the cardholder has notified (in writing, orally, or otherwise) the creditor that use of the credit card by that person is no longer authorized. See also comment 205.2(m)–2 of the Official Staff Commentary to Regulation E, 12 CFR part 205. New comment 12(b)(1)–4 would provide, however, that an unauthorized use would include circumstances where a person has obtained a credit card, or otherwise has initiated a credit card transaction through robbery or fraud (*e.g.*, if the person holds the consumer at gunpoint). *See* also comment 205.2(m)–3 of the Official Staff Commentary to Regulation E, § 205.5. In both cases, the Board believes it is appropriate for the same standard to apply to credit cards that applies to debit cards under Regulation E. Thus, the Board is proposing to adopt the two standards under Regulation Z for consistency.

The Board does not anticipate that the proposed comments would significantly expand the circumstances under which liability could be imposed on a cardholder for a particular transaction, in light of the existing reference in the definition of ''unauthorized use'' to ''implied or apparent authority.'' Nevertheless, the addition of this comment could help provide greater clarity for issuers when investigating unauthorized use claims. Comment is requested, however, as to whether this clarification is necessary in light of the existing definition of ''unauthorized use.'' Current § 226.12(b)(1) would be re-designated as § 226.12(b)(1)(ii).

Section 226.12(b)'s liability provisions apply only to unauthorized uses of a cardholder's *credit card*. Thus, the liability limits established in § 226.12(b) do not apply to unauthorized transactions involving the use of a check that accesses a credit card account. (*See* prior discussion of ''credit card'' under § 226.2(a)(15).) The consumer would nevertheless be able to assert the billing error protections in § 226.13 which are independent of the protections under § 226.12(b). New comment 12(b)–4 would contain this clarification.

Some commenters on the December 2004 ANPR urged the Board to adopt a time period within which consumers must make claims for unauthorized transactions made through the use of a *credit card*. These commenters asserted that over time, evidence becomes more difficult to obtain, making a creditor's investigation more difficult and that a consumer's early detection and notification would prevent additional fraud on the account. In contrast to TILA Section 161 which requires consumers to assert a billing error claim within 60 days after a periodic statement reflecting the error has been sent, TILA Section 133 does not prescribe a time frame for asserting an unauthorized use claim. 15 U.S.C. 1643. The Board believes that had Congress intended that a consumer's rights to assert an unauthorized use claim to be time-limited, it would have established a time frame for asserting the claim. Accordingly, the proposal does not contain the suggested change.

Conditions for imposing liability. Section 226.12(b)(2) requires the card issuer to satisfy three conditions before the issuer may impose any liability for an unauthorized use of a credit card. First, the credit card must be an accepted credit card. *See* footnote 21; proposed comment 12–2. Second, the card issuer must have provided ''adequate notice'' to the cardholder of his or her maximum potential liability and the means by which to notify the issuer of the loss or theft of the card. Third, the card issuer also must have provided a means to identify the cardholder on the account or the authorized user of the card. *See* § 226.12(b)(2).

Under the proposal, the guidance regarding what constitutes adequate notice currently in footnote 23 would be moved to the staff commentary. *See* new comment 12(b)(2)(ii)–2. In addition, the examples in comment 12(b)(2)(iii)–1 describing means of identifying a cardholder or user would be updated to contemplate additional biometric means of identification other than a fingerprint on a card.

Comment 12(b)(2)(iii)–3 currently states that a cardholder may not be held liable under § 226.12(b) when the card itself or some other sufficient means of identification of the cardholder is not presented. In these circumstances, the card issuer has not satisfied one of the conditions precedent necessary to impose liability; that is, it has not provided a means to identify the cardholder of the account or the user of the card. For example, no liability may be imposed on the cardholder if a person without authority to do so orders merchandise by telephone, using a credit card number or another number that appears only on the card. The example would be updated to also apply to Internet transactions.

In many instances, a credit card will bear a separate 3- or 4-digit number, which is typically printed on the back of the card on the signature block or in some cases on the front of the card above the card number. Although the provision of the 3- or 4-digit number may suggest that the person providing the number is in possession of the card, it does not meet the requirement to provide a means to identify the cardholder or the authorized user of the card, as required by the regulation. Thus, comment 12(b)(2)(iii)–3 would clarify that a card issuer may not impose liability on the cardholder when merchandise is ordered by telephone or Internet if the person using the card without the cardholder's authority provides the credit card number by itself or with other information that appears on the card because it has not met the requirement that a means to identify the cardholder or authorized user of the card in the transaction.

The Board is also proposing revisions to Model Clause G–2, which can be used to explain the consumer's liability for unauthorized use, to improve its readability. For HELOCs subject to § 226.5b, at the creditor's option, the creditor may use Model Clause G–2 or G–2(A). For open-end (not home-secured) plans, the creditor may use G–2(A).

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

Under TILA Section 170, as implemented in § 226.12(c) of the regulation, a cardholder may assert against the card issuer a claim or defense for defective goods or services purchased with a credit card. The claim or defense applies only as to unpaid balances for the goods or services, and if the merchant honoring the card fails to resolve the dispute. *See* 15 U.S.C. 1666i. The cardholder may withhold payment up to the unpaid balance of the purchase that gave rise to the dispute and any finance or other charges imposed on that amount. The right is limited to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles. *See* § 226.12(c).[18] The proposal would update the regulation to address current business practices and move guidance currently in the footnotes to the rule or the staff commentary as appropriate.

In order to assert a claim under § 226.12(c), a cardholder must have used a credit card to purchase the goods or services associated with the dispute. Comment 12(c)(1)–1 lists examples of circumstances that are excluded or included by § 226.12(c). The proposal would add Internet transactions charged to the credit card account to the list of circumstances included within the scope of § 226.12(c) (provided that certain conditions are met, including that the disputed transaction take place in the same state as the cardholder's current designated address, or within 100 miles from that address).

In technical revisions, guidance stating § 226.12(c)'s inapplicability to the transactions listed in footnote 24 has been moved to comment 12(c)–3 with corresponding changes in comment 12(c)(1)–1. The reference to ''paper-based debit cards'' in existing comment 12(c)(1)–1 would be deleted as obsolete. The Board is aware of at least one product, however, whereby a consumer can pay cash and is instantly issued an account number (along with a 3-digit card identification number and expiration date) that allows the consumer to conduct transactions with an online merchant. No physical card device is issued to the consumer.

[18] Certain merchandise disputes, such as the nondelivery of goods, may also be separatel asserted as a ''billing error'' under §226.13(a)(3). *See* comment 12(c)–1.

Comment is requested whether the reference to paper-based debit cards should be retained or expanded to include these ''virtual'' cards. Comment is also requested as to whether the references to ''check-guarantee cards'' under comments 12(c)–3 (see existing footnote 24) and 12(c)(1)–1 should continue to be retained as guidance in the commentary or whether they should also be deleted as obsolete.

Section 226.12 also requires that the disputed transaction must have occurred in the same state as the cardholder's current designated address or, if different, within 100 miles from that address. *See* § 226.12(c)(3). Thus, if applicable state law provides that a mail, telephone, or Internet transaction occurs at the cardholder's address, such transactions would be covered under § 226.12(c), even if the merchant is located more than 100 miles from the cardholder's address. The conditions for asserting merchant claims would be re-designated under § 226.12(c)(3)(i)(A) and (B) in the proposal. In addition, the Board proposes to move the guidance currently found in footnote 26 regarding the applicability of some of the limitations in § 226.12(c) to § 226.12(c)(3)(ii). Corresponding revisions to reflect the proposed changes would also be made to the staff commentary, with additional clarifying changes.

Guidance regarding how to calculate the amount of the claim or defense that may be asserted by the cardholder under § 226.12(c), currently found in footnote 25, would be moved to the commentary in proposed comment 12(c)–4.

12(d) Offsets by Card Issuer Prohibited

TILA Section 169 prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. 15 U.S.C. 1666h. The statutory provision is implemented by § 226.12(d) of the regulation. Section 226.12(d)(2) currently provides that card issuers are permitted to ''obtain or enforce a consensual security interest in the funds'' held on deposit. Comment 12(d)(2)–1 provides guidance on the security interest provision. For example, the security interest must be affirmatively agreed to by the consumer, and must be disclosed as part of the account-opening disclosures under § 226.6. In addition, the comment provides that the security interest must not be ''the functional equivalent of a right of offset.'' The comment states that the consumer ''must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.'' The comment gives some examples of how this requirement can be met, such as use of separate signature or initials to authorize the security interest, placement of the security agreement on a separate page, or reference to a specific amount or account number for the deposit account. The comment also states that the security interest must be ''obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).''

From time to time, questions have been raised about comment 12(d)(2)–1. For example, some card issuers have asked whether using only one of the methods to ensure the consumer's awareness and intent is sufficient, versus using more than one. Card issuers have also asked about the requirement that the security interest be obtainable and enforceable by creditors generally. The Board requests comment on whether additional guidance is needed and, if so, the specific issues that the guidance should address.

12(e) through 12(g)

Sections § 226.12(e), (f), and (g) address, respectively: the prompt notification of returns and crediting of refunds; discounts and tie-in arrangements; and guidance on the applicable regulation (Regulation Z or Regulation E) in instances involving both credit and electronic fund transfer aspects. The Board does not propose any changes to these provisions.

Section 226.13 Billing Error Resolution

TILA Section 161, as implemented in § 226.13 of the regulation, addresses error resolution procedures for billing errors, and requires a consumer to provide written notice of the error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. In contrast to the consumer protections in § 226.12 of the regulation, which are limited to transactions involving the use of a credit card, the billing error procedures apply to *any* extensions of credit that are made in connection with an open-end account. Commenters on the December 2004 ANPR provided few comments addressing the billing error provisions, except to urge the Board to increase the time period for investigating errors. Q43.

The proposed revisions would clarify, among other things, that (1) the billing error provisions apply to purchases made using a third-party payment intermediary, where the purchase is funded through an extension of credit using the consumer's credit card or other open-end plan; (2) a creditor must complete its investigation within the time frames established under the regulation and may not reverse any credits made once the time frames have expired; and (3) a creditor may not deduct any portion of a disputed amount or related charges when a cardholder uses an automatic payment service offered directly by or through the creditor.

In technical revisions, the substance of footnotes 27–30 would be moved to the regulation or the commentary, as appropriate, and footnote 31 would be deleted. (*See* redesignation table below.) For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

13(a) Definition of Billing Error

The definition of a billing error in § 226.13(a) would be substantively unchanged in the proposal. Under § 226.13(a)(3), the term ''billing error'' includes disputes about property or services that are not accepted by the consumer or not delivered to the consumer as agreed. *See* § 226.13(a)(3). The proposal would add a new comment 13(a)(3)–2 to clarify that § 226.13(a)(3) also applies when a consumer uses his or her credit card or other open-end account to purchase a good or service through a third-party payment intermediary, such as a person-to-person Internet payment service.

In some cases, a consumer might pay for merchandise purchased through an Internet auction site using an Internet payment service, which is in turn funded through an extension of credit from the consumer's credit card or other open-end account. As in the case of purchases made using a check that accesses a consumer's credit card account, there may not be a direct relationship between the merchant selling the merchandise and the card issuer when an Internet payment service is used. Because a consumer has billing error rights with respect to purchases made with checks that access a credit card account, the Board believes the same result should apply when the consumer makes a purchase using a third-party intermediary funded using the same credit card account. In particular, the Board believes that there is little difference between a consumer using his or her credit card to make a payment directly to the merchant on the merchant's Internet Web site or to make a payment to the merchant through a third-party intermediary. Accordingly, comment 13(a)(3)–2 would clarify that when an extension of credit from the consumer's credit card or other open-end account is used to fund a purchase through a third-party payment intermediary, the good or service purchased is not the payment medium, but rather the good or service that is obtained using the payment service.

Proposed new comment 13(a)(3)–3 would clarify that prior notice to the merchant is not required before the consumer can assert a billing error that the good or service was not accepted or delivered as agreed. Thus, in contrast to claims or defenses asserted under TILA Section 170 and § 226.12(c) of the regulation which require that the cardholder first make a good faith attempt to obtain satisfactory resolution of a disagreement or problem with the person honoring the credit card, the consumer need not provide prior notice of the dispute to the person from whom the consumer purchased the good or service of the dispute before asserting a billing error claim directly with the creditor. 15 U.S.C. 1666i.

The text of footnote 27 prohibiting a creditor from accelerating a consumer's debt or restricting or closing the account because the consumer has exercised billing error rights, and alerting creditors to the statutory forfeiture penalty under TILA Section 161(e) (15 U.S.C. 1666) for failing to comply with any of the requirements in § 226.13 would be moved to the list of error resolution rules under § 226.13(d)(3). Current comment 13–1 referring to this general prohibition would be deleted as redundant.

13(b) Billing-Error Notice

To assert a billing error under § 226.13(b), a consumer must provide a written notice of the error to the creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged error. The notice must provide sufficient information to enable the creditor to investigate the claim, including the consumer's name and account number, the type, date and amount of the error, and, to the extent possible, the consumer's reasons for his or her belief that a billing error exists.

Comment 13(b)–1 would be revised to incorporate the guidance currently in footnote 28 stating that the creditor need not comply with the requirements of § 226.13(c) through (g) if the consumer voluntarily withdraws the billing error notice. Comment 13(b)–2 would be added to incorporate the guidance currently in footnote 29 stating that the creditor may require that the written billing error notice not be made on the payment coupon or other material accompanying the periodic statement if the creditor so states in the billing rights statement on the account-opening disclosure and annual billing rights statement. In addition, comment 13(b)–2 would provide that billing error notices submitted electronically would be deemed to satisfy the requirement that billing error notices be provided in writing, provided that the creditor has stated in the billing rights statement required by §§ 226.6(c)(2) and 226.9(a) that it will accept notices submitted electronically, including how the consumer can submit billing error notices in this manner.

13(c) Time for Resolution; General Procedures

Section 226.13(c) generally requires a creditor to mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing-error notice, and to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing-error notice. Comment 13(c)(2)–2 would be added to clarify that a creditor must complete its investigation and conclusively determine whether an error occurred within the error resolution time frames. Thus, once the error resolution time frame has expired, the creditor may not reverse any corrections it has made related to the asserted billing error, including any previously credited amounts, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted. The statute is clear that a creditor must complete its investigation and make appropriate corrections to the consumer's account within two complete billing cycles after the receipt of the consumer's notice of error, and does not permit the creditor to continue its investigation beyond the error resolution period. 15 U.S.C. 1666. This rule is intended to ensure finality in the error resolution process, and to ensure creditors complete their investigations in a timely manner. Of course, a creditor may reverse a prior determination, based on an investigation, that no error occurred and subsequently credit the consumer's account for the amount of the error even after the error resolution period has elapsed.

Some commenters on the December 2004 ANPR urged the Board to increase the time period for investigating errors from 90 days to 120 days to allow issuers to investigate billing error claims effectively. Q43. The 90-day time frame is statutory, and the Board does not propose to extend the maximum error resolution period. The Board further notes that the 90-day maximum time frame would apply only in cases where a creditor's billing cycle is 45 days or more. Otherwise, the creditor must complete its investigation within the time period represented by two billing cycles. Thus, for example, if a creditor's billing cycle is 30 days, it would only have 60 days to conclude its investigation of alleged billing errors.

Of course, any determination that an error has not occurred must be based upon a reasonable investigation. *See* § 226.13(f).

13(d) Rules Pending Resolution

Once a billing error is asserted by a consumer, the creditor is prohibited under § 226.13(d) from taking certain actions with respect to the dispute in order to ensure that the consumer is not otherwise discouraged from exercising his or her billing error rights. For example, the creditor may not take action to collect any disputed amounts, including related finance or other charges, or make or threaten to make an adverse report, including reporting that the amount or account is delinquent, to any person about the consumer's credit standing arising from the consumer's failure to pay the disputed amount or related finance or other charges.

Under the current rule, the card issuer is specifically prohibited from deducting any part of the disputed amount or related charges from a cardholder's deposit account that is also held by the card issuer. To reflect new payment practices, the proposal would extend the prohibition to automatic deductions from the consumer's deposit account where the consumer has enrolled in the card issuer's automatic payment plan. The Board believes that whenever an automatic payment service is offered by the card issuer, thereby giving the card issuer control over the amount to be debited, a cardholder should not be treated any differently solely because the consumer's deposit account is maintained at a different account-holding institution. Thus, for example, if the cardholder has agreed to pay a predetermined amount each month and subsequently disputes one or more transactions that appear on a statement, the card issuer must ensure that it does not debit the consumer's asset account for any part of the amount in dispute. The proposed revision would apply whether the card issuer operates the automatic payment service itself or outsources the service to a third-party service provider, but would not apply where the consumer has enrolled in a third-party bill payment service that is not offered by the card issuer. Thus, for example, the proposed revision would not apply where the consumer uses a bill-payment service offered by his or her deposit account-holding institution to pay his debt (unless the account-holding institution is also the card issuer). Section 226.13(d)(1) and comment 13(d)(1)–4, which describes the coverage of the automatic payment plan exclusion, would be revised to reflect the proposed change. Comment is requested regarding any operational issues card issuers may encounter in implementing the systems changes necessary to comply with the proposed revision.

13(e) Procedures if Error Occurred as Asserted and 13(f) Procedures if Different Billing Error or No Billing Error Occurred

Paragraphs (e) and (f) of § 226.13 set forth procedures that a creditor must follow to resolve a billing error claim, depending on whether the billing error occurred as asserted, or if a different billing error or no billing error occurred. In particular, § 226.13(f) requires that a creditor first conduct a reasonable investigation before the creditor may deny the consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. *See* TILA Section 161(a)(3)(B)(ii); 15 U.S.C. 1666(a)(3)(B)(ii). These provisions in the regulation would be substantively unchanged in the proposal. The text of footnote 31 is deleted as unnecessary in light of the general obligation under § 226.13(f) to conduct a reasonable investigation before a creditor may deny a billing error claim.

13(g) Creditor's Rights and Duties After Resolution

Section 226.13(g) specifies the creditor's rights and duties once it has determined, after a reasonable investigation under § 226.13(f), that a consumer owes all or a portion of the disputed amount and related finance or other charges. The proposal would provide guidance to clarify the length of the time the consumer would have to repay the amount determined still to be owed without incurring additional finance charges (i.e., the grace period) that would apply under these circumstances.

Before a creditor may collect any amounts owed related to a disputed charge that is determined to be proper, the creditor must promptly notify the consumer in writing when the payment is due and the portion of the disputed amount and related finance or other charges that is still owed (including any charges that may be retroactively imposed on the amount found not to be in error). *See* 15 U.S.C. 1666(a); § 226.13(g)(1). The consumer must then be given any grace period disclosed under proposed §§ 226.6(a)(1), 226.6(b)(1), 226.7(a)(8), or 226.7(b)(8), as applicable, to pay the amount due as specified in the written notice without incurring any additional finance or other charges. *See* § 226.13(g)(2). Comment 13(g)(2)–1 would be revised to clarify that if the consumer was entitled to a grace period at the time the consumer asserted the alleged billing error, then the consumer must be given a period of time equivalent to the disclosed grace period to pay the disputed amount as well as related finance or other charges. The Board believes that this interpretation is necessary to ensure that consumers are not discouraged from asserting their statutory billing rights by putting the consumer in the same position (that is, with the same grace period) if the consumer had not disputed the transaction in the first place.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Section 226.13(i) is designed to facilitate compliance when financial institutions extend credit incident to electronic fund transfers that are subject to the Board's Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. *See* 12 CFR part 205. The provision states that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with §§ 226.13(d) and (g)). The Board is not proposing any changes to this provision as it appears in the regulation; however, a minor clarification is proposed for an existing comment.

Comment 13(i)–2 states that incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. The example in the current comment would be revised to include a specific reference to overdraft protection services that are not subject to the Board's Regulation Z when there is no agreement between the creditor and the consumer to extend credit when the consumer's account is overdrawn. *See* § 226.4(c)(3); 70 FR 29,582; May 24, 2005.

Comment is requested as to whether the Board should expand the guidance provided under § 226.13(i) to apply more generally to other circumstances when an extension of credit is incident to an electronic fund transfer, rather than limited to transactions pursuant to an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified balance. For example, in situations where a consumer transfers funds from an open-end credit plan, such as a home-equity line of credit, to the consumer's checking or savings account, the wrong amount may be transferred from the credit plan to the deposit account. Both Regulation E and Z could potentially apply under this circumstance leaving a potential issue as to which set of error resolution provisions the creditor/ financial institution should follow. In particular, if Regulation E is deemed to apply, the institution would have a shorter period of time in which to complete its investigation.

Section 226.14 Determination of Annual Percentage Rate

As discussed in the section-by-section analysis to § 226.7(b)(7), Regulation Z requires disclosure on periodic statements of both the effective APR and the corresponding APR. The regulation also requires disclosure of the corresponding APR in account-opening disclosures, change-in-terms notices, advertisements, and other documents. The computation methods for both the corresponding APR and the effective APR are implemented in § 226.14 of Regulation Z. Section 226.14 also provides tolerances for accuracy in APR disclosures.

As also discussed in the section-by-section analysis to § 226.7(b)(7), the Board is proposing for comment two alternative approaches regarding the computation and disclosure of the effective APR. Under the first alternative, the Board proposes to retain the requirement that the effective APR be disclosed on the periodic statement, with modifications to the rules for computing and disclosing the effective APR to reflect an approach tested with consumers. *See* proposed § 226.7(b)(7) and § 226.14(d). For HELOCs subject to § 226.5b, the Board proposes to allow a creditor to comply with the current rules applicable to the effective APR; creditors would not be required to make changes in their periodic statement systems for such plans at this time. *See* proposed §§ 226.7(a)(7), 226.14(c). If the creditor chooses, however, the creditor may disclose an effective APR for its HELOCs according to any revised rules adopted for the effective APR.

The second alternative would be to eliminate the requirement to provide the effective APR on the periodic statement. Under the second alternative, for a HELOC subject to § 226.5b, a creditor would have the option of providing the effective APR according to current rules. The two proposed alternatives are reflected in two proposed alternative versions of § 226.14.

Under either alternative, the current provisions in § 226.14(a) and (b) dealing with tolerances for the APR and guidance on calculating the APR for certain disclosures other than the periodic statement would not be substantively revised, but minor changes would be made. Section 226.14(b) identifies the regulatory sections where a corresponding APR (the periodic rate multiplied by the number of periods in a year) must be disclosed. A reference to proposed §§ 226.7(a)(4) and 226.7(b)(4) (currently § 226.7(d)), which requires creditors to disclose corresponding APRs on periodic statements, would be added to § 226.14(b). (A reference to § 226.7(d) would be deleted from § 226.14(c) as obsolete.) With respect to technical revisions, under both alternatives, the § 226.14 regulatory and commentary text would be revised where necessary to reflect changes in terminology and to eliminate footnotes, moving their substance into the text of the regulation.

First alternative proposal. Under the first alternative, the proposed new rules for calculating the effective APR are contained in §§ 226.14(d) and 14(e), and accompanying commentary. As discussed above under § 226.7(b)(7), for multifeatured plans, the Board proposes to require that the creditor must compute and disclose an effective APR separately for each feature. For example, purchases and cash advances would be separate features; there might be two separate cash advance features, if there was a promotional APR on certain cash advances and a different APR on others. Proposed § 226.14(d) and accompanying commentary provide rules on how the effective APR should be computed for each feature. (Current § 226.14(d) would be redesignated as § 226.14(c)(5)).

In proposed § 226.14(e), the Board proposes to limit the finance charges that are included in calculating the effective APR. These charges would be: (1) Charges attributable to a periodic rate used to calculate interest; (2) charges that relate to a specific transaction; (3) charges related to required credit insurance or debt cancellation or suspension coverage; (4) minimum charges imposed if, and only if, a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum (such as a $1.00 minimum finance charge); and (5) charges based on the account balances, account activity or inactivity, or the amount of credit available. This exclusive list is intended to limit disclosure of an effective APR to situations in which it is more likely to be understood by consumers and be useful to consumers, as well as provide creditors with certainty as to the fees that must be included in the computation of the effective APR.

For finance charges that relate to a specific transaction, such as cash advance and balance transfers, expressing the interest and transactions fees in the effective APR may help consumers better understand the costs of these transactions. For finance charges that relate to *required* credit insurance or debt cancellation or suspension coverage (coverage for which the regulation's conditions for excluding the charge from the finance charge have not been satisfied), consumers may benefit from seeing an effective APR that combines two costs that will be imposed every month if a consumer carries a balance—interest on the balance and the required fee for insurance or debt cancellation or suspension coverage. For finance charges that are minimum charges in lieu of interest described above, a consumer that typically carries a small balance may benefit from seeing an effective APR that includes this minimum charge, so that the consumer understands that he or she is paying a higher rate for carrying that small balance than the corresponding APR suggests. For finance charges based on the account balances, account activity or inactivity, or the amount of credit available, consumers may benefit from seeing an effective APR that includes these charges, because these charges could be imposed as often as every month as a substitute for interest or in addition to interest. For example, the Board is aware of at least one credit card product where there is no interest rate applicable to the card, but each month a fixed charge is charged based on the outstanding balance on the card (for example, $6 charge per $1,000 balance). For such a price structure, which has a corresponding APR of zero, consumers may find the effective APR helpful.

Also, in proposed § 226.14(e), the Board would make clear that a finance charge related to opening the account, and a finance charge imposed not more often than annually as a condition to continuing or renewing the account, is not included in calculating the effective APR. Because these fees would be imposed infrequently (either at account opening or annually, or less frequently, to continue or renew the account), including these finance charges in the effective APR may not be helpful to consumers.

With respect to open-end (not home-secured) plans, the Board would also revise the current rule that exempts a creditor from disclosing an effective APR when the total finance charge does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata share of 50 cents for a shorter cycle. *See* 15 U.S.C. 127(b)(6); current § 226.14(c)(4). The Board would exercise its exceptions authority to adjust the 50-cent threshold to $1.00 to reflect adjusted prices since the rule was implemented. Section 226.14(d)(4) would also be revised to limit the finance charges included in determining whether the threshold is exceeded to those specified in proposed § 226.14(e). *See* proposed § 226.14(d)(4).

Also under the first alternative, the Board proposes to place in § 226.14(c) the rules for calculating the effective APR for periodic statements for HELOCs subject to § 226.5b. As proposed, § 226.14(c) provides that, for HELOCs subject to § 226.5b, a creditor may comply either with (1) the current rules applicable to the effective APR, (which are contained in proposed § 226.14(c)), or (2) with the revised rules applicable to open-end (not home-secured) plans (which are contained in proposed § 226.14(d)).

Second alternative proposal. Under the second alternative, for the reasons discussed in the section-by-section analysis to § 226.7(b)(7), the Board proposes to eliminate the requirement to provide the effective APR on the periodic statement. Under this alternative, however, for a HELOC subject to § 226.5b, a creditor would have the option of disclosing an effective APR according to the current rules in Regulation Z for computing and disclosing the effective APR. No guidance would be given for disclosing the effective APR on open-end (not home-secured) plans, since the requirement to provide the effective APR on such plans would be eliminated.

Section 226.16 Advertising

TILA Section 143, implemented by the Board in § 226.16, governs advertisements of open-end credit plans. 15 U.S.C. 1663. The statute applies to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising an open-end credit plan, whether or not such person meets the definition of creditor. *See* comment 2(a)(2)–2. Under the statute, if an advertisement sets forth any of the specific terms of the plan, then the advertisement must also state: (1) Any minimum or fixed amount which could be imposed; (2) the periodic rates expressed as APRs, if periodic rates may be used to compute the finance charge; and (3) any other term the Board requires by regulation. The specific terms of an open-end plan that ''trigger'' additional disclosures, which are commonly known as ''triggering terms,'' are finance charges and other charges required to be disclosed under current §§ 226.6(a) and 226.6(b). If an advertisement states a triggering term, the regulation requires that the advertisement also state (1) any minimum, fixed, transaction, activity or similar charge that could be imposed; (2) any periodic rate that may be applied expressed as an APR; and (3) any membership or participation fee that could be imposed. *See* current § 226.16(b) and comment 16(b)–7 (as redesignated to proposed comment 16(b)–1).

The Board is proposing several changes to the advertising rules in § 226.16 in order to ensure meaningful disclosure of advertised credit terms, alleviate compliance burden for certain advertisements, and implement provisions of the Bankruptcy Act. Specifically, under § 226.16(b), the Board is proposing to make the triggering terms consistent for all open-end credit advertisements by including terms stated negatively (for example, no interest), as is currently required under TILA for advertisements of HELOCs. Presently, for advertisements for open-end (not home-secured) plans, only positive terms trigger the additional disclosure.

If an advertisement states a minimum monthly payment to finance a purchase under a plan established by a creditor or retailer, the proposal would amend § 226.16(b) to require a disclosure of the total number of payments and time period to repay. In addition, the Board is proposing in new § 226.16(g) to provide guidelines concerning use of the word ''fixed'' in connection with an APR. To ease compliance burden on advertisers, the Board is proposing in new § 226.16(f), alternative disclosures for television and radio advertisements in recognition of the time and space constraints on such media. Finally, the Board is implementing Section 1303 of the Bankruptcy Act, in part, in new § 226.16(e) and Section 1309 of the Bankruptcy Act in the commentary on clear and conspicuous in new comment 16–2. The Board's proposed revisions to § 226.16 and the accompanying commentary are described in more detail below.

Clear and conspicuous standard. Comment 16–1 provides that disclosures made under § 226.16 are subject to the clear and conspicuous standard required for all disclosures for open-end credit plans. *See* § 226.5(a)(1). To be clear and conspicuous, disclosures must be in a reasonably understandable form. *See* comment 5(a)(1)–1. Generally, there are no specific rules regarding the format of disclosures in advertisements. *See* comment 16–1.

Section 1309 of the Bankruptcy Act requires the Board to implement the ''clear and conspicuous'' term as it applies to certain disclosures required by Section 1303(a) of the Bankruptcy Act. Section 1303(a) applies to direct-mail applications and solicitations for credit cards and accompanying promotional materials. The Bankruptcy Act requires, in part, that when an introductory rate is stated, the time period in which the introductory period will end and the rate that will apply after the end of the introductory period must be stated ''in a clear and conspicuous manner'' in a prominent location closely proximate to the first listing of the introductory rate. The statute requires these disclosures to be ''reasonably understandable and designed to call attention to the nature and significance of the information in the notice.''

The Board solicited comment in the October 2005 ANPR on interpreting the standard for clear and conspicuous set forth in Section 1309 of the Bankruptcy Act. Q85. Most industry commenters stated that additional guidance on clear and conspicuous was unnecessary. Consumer group commenters suggested that the Board impose minimum font size requirements, while industry commenters universally opposed such requirements.

After considering comments, the Board is proposing in comment 16–2 that creditors clearly and conspicuously disclose when the introductory period will end and the rate that will apply after the end of the introductory period if the information is equally prominent to the first listing of the introductory rate to which it relates. Guidance on what is considered the first listing of the introductory rate is given in proposed comment 16(e)–4, as discussed below. The Board is also proposing that if these disclosures are the same type size as the first listing of the introductory rate, they will be deemed to be equally prominent. *See* proposed comment 16–2. Requiring equal prominence for this information calls attention to the nature and significance of such information by ensuring that the information is at least as significant as the introductory rate to which it relates. Furthermore, an equally prominent standard for similar information currently applies to advertisements for HELOCs. *See* current § 226.16(d)(2).

16(b) Advertisement of Terms That Require Additional Disclosures

Negative terms as triggering terms. If an advertisement states certain terms, additional information must be disclosed. *See* § 226.16(b). The goal of this triggering term approach is to provide consumers with a more complete picture of costs that may apply to the plan when certain specified charges for the plan are given. TILA Section 143 provides that stating any specific term of the plan triggers additional disclosures. 15 U.S.C. 1663. The Board, however, limited triggering terms for advertisements of open-end (not home-secured) plans to those terms that are stated as a positive number. For home-equity advertisements, under TILA Section 147(a) (15 U.S.C. 1665b(a)), triggering terms include both positive as well as negative terms. *See* also current § 226.16(d)(1) and comments 16(b)–2 and 16(d)–1. Pursuant to TILA Section 143(3), the Board proposes to apply this approach to advertisements for all open-end plans. The Board believes that negative terms such as ''no interest'' and ''no annual fee'' alone may not provide consumers with a sufficiently accurate portrayal of possible costs associated with the plan if the additional disclosures are not provided. This approach would also ensure similar treatment for all open-end plans. Current comment 16(b)–2 would be amended accordingly and moved to a revised comment 16(b)–1, which includes guidance on triggering terms in general. *See* redesignation table below.

Advertisement of minimum monthly payment. The Board has the authority under TILA Section 143(3) to require the disclosure in advertisements for open-end credit of any terms in addition to those explicitly required by the statute. 15 U.S.C. 1663(3). The Board proposes to require additional disclosures for advertisements that provide a minimum monthly payment for an open-end credit plan that would be established to finance the purchase of goods or services. If a minimum monthly payment is advertised, the advertisement would be required to state, in equal prominence to the minimum payment, the time period required to pay the balance and the total dollar amount of payments if only minimum payments are made. Proposed § 226.16(b)(2) would clarify that this disclosure should assume that the consumer makes only the minimum payment required during each payment period.

The Board believes that advertisements that state a minimum monthly payment will provide a clearer picture of credit costs if such advertisements also state the total dollar amount of payments the consumer would make, and the amount of time needed to pay the balance if only the minimum payments are made. The Board has received comments from time to time from state attorneys general regarding creditors that sell large-ticket items and simultaneously arrange financing for the purchase of those items. *See* discussion regarding the definition of open-end credit in the section-by-section analysis to § 226.2(a)(20). The comments the Board has received indicate that some consumers agree to the financing on the basis of a certain advertised minimum payment but are later surprised to learn how long the debt will take to pay, and how much the credit will cost them over that time period. The Board believes that disclosure of the time period and total dollar amount of payments will help to improve consumer understanding about the cost of credit products for which a minimum monthly payment is advertised.

Other changes to 226.16(b). Currently, terms that are required to be disclosed under § 226.6 trigger the disclosure of additional terms. *See* § 226.16(b). Under current comment 16(b)–1, this would include terms required to be disclosed under §§ 226.6(a) and 226.6(b). As discussed in the section-by-section analysis to § 226.6, the Board is proposing new cost disclosure rules for open-end (not home-secured) plans, but is preserving existing cost disclosure rules for HELOCs pending a review of all home-secured rules. Section 226.16(b) would be conformed to reflect these revisions.

In technical revisions, § 226.16(b) has been renumbered: Triggering term requirements would be set forth in a revised § 226.16(b)(1); and the new proposed minimum monthly payment disclosures would be set forth in a revised § 226.16(b)(2). Footnote 36d (stating that disclosures given in accordance with § 226.5a do not constitute advertising terms) would be deleted as unnecessary since ''advertisements'' do not include notices required under federal law, including disclosures required under § 226.5a. *See* comment 2(a)(2)–1(ii). The Board is proposing to move the guidance in current comments 16(b)–1 and 16(b)–8 to new § 226.16(b)(1), with some revisions. Proposed comment 16(b)–1 would provide guidance on triggering terms by consolidating current comment 16(b)–2, amended as discussed above, with current comment 16(b)–7. Current comment 16(b)–6 would be eliminated as duplicative of the requirements under proposed § 226.16(e), as discussed below.

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

Amendments to § 226.16(c) and comments 16(c)(1)–1, 16(c)(1)–2, and 16(c)(3)–1 reflect provisions contained in the 2007 Electronic Disclosure Proposal. *See* 72 FR 21,1141; April 30, 2007. The amendments provide that for an advertisement that is accessed by the consumer in electronic form, the disclosures required under § 226.16 must be provided to the consumer in electronic form on or with the advertisement.

16(d) Additional Requirements for Home-Equity Plans

No revisions are proposed for the advertising rules under § 226.16(d), consistent with the Board's plan to review rules affecting HELOCs in a separate rulemaking.

High loan-to-value disclosures. Section 1302 of the Bankruptcy Act amends TILA Section 127(a)(13) to require that credit applications for, and advertisements related to, an extension of credit secured by a dwelling that may exceed the fair market value of the dwelling include a statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes. 15 U.S.C. 1637(a)(13). For these applications and advertisements, the statute also requires inclusion of a statement that the consumer should consult a tax adviser for further information on the deductibility of the interest. The new disclosures would apply to advertisements for home-secured credit, whether open-end or closed-end; thus, the Board plans to address issues related to this requirement during its review of the rules relating to home-secured credit.

16(e) Introductory Rates

TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act, requires that if a credit card issuer states an introductory rate in applications, solicitations, and all accompanying promotional materials, the issuer must use the term ''introductory'' clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). Credit card issuers also must disclose, in a prominent location closely proximate to the first mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires.

TILA Section 127(c)(7), as added by Section 1304(a) of the Bankruptcy Act, applies these requirements to ''any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service.'' 15 U.S.C. 1637(c)(7). The Board proposes to implement these requirements for promotional materials accompanying such applications or solicitations in a new § 226.16(e). In addition, the Board proposes to apply these requirements more broadly, pursuant to the Board's authority under TILA Section 105(a), to issue regulations with classification, differentiations or other provisions as in the judgment of the Board are necessary to effectuate the purposes of TILA, as discussed below. 15 U.S.C. 1604(a). Sections 1303 and 1304 of the Bankruptcy Act would be implemented in § 226.5a, and are discussed in the section-by-section analysis to § 226.5a.

16(e)(1) Scope

The Bankruptcy Act amendments regarding ''introductory'' rates, the time period these rates may be in effect, and the post-introductory rate apply to direct-mail applications and solicitations, and accompanying promotional materials. 15 U.S.C. 1637(c)(1)(A). To provide meaningful disclosure of credit terms in order to avoid the uninformed use of credit, the Board is proposing to extend these requirements to applications or solicitations to open a credit card account, and all accompanying promotional materials, that are available publicly (''take-ones''). 15 U.S.C. 1601(a); 15 U.S.C. 1604(a); 15 U.S.C. 1637(c)(3)(A). Consumers who obtain publicly available applications and solicitations are in essentially the same position in terms of the shopping process as consumers who receive direct mail applications and solicitations or applications or solicitations offered through the Internet. Therefore, the Board believes the information provided about introductory rates in these materials should be the same.

Moreover, as discussed in the section-by-section analysis to § 226.5a(a)(2), the Board is proposing to apply the Bankruptcy Act provisions relating to Internet offers to both electronic solicitations *and* applications, although the statute refers only to solicitations, in order to promote the informed use of credit. Therefore, proposed § 226.16(e)(1) would state that the introductory rate requirements in § 226.16(e) apply to all promotional materials accompanying credit card applications and solicitations offered through direct mail and electronically as well as those available publicly.

Furthermore, the Board proposes to extend some of the requirements in Section 1303 of the Bankruptcy Act regarding the presentation of introductory rates to other written advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of HELOCs subject to § 226.5b, in order to promote the informed use of credit. Advertisements for open-end credit plans are already required to comply with similar, though not identical, requirements to those set forth in Section 1303 of the Bankruptcy Act for ''discounted variable-rate plans.'' *See* current comment 16(b)–6. Specifically, ''discounted variable-rate plans'' are required to provide both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The Board's proposal would ensure that the presentation of introductory rates in all written advertisements for open-end credit is consistent with the presentation requirements for promotional materials accompanying applications and solicitations, as discussed below. The Board believes consumers will benefit from these enhancements and advertisers will benefit from the consistent application of requirements related to introductory rates for all written open-end advertisements. Since the Board plans to address issues related to HELOCs during the next phase of its review of Regulation Z, proposed § 226.16(e) would not apply to advertisements of HELOCs subject to § 226.5b. The requirements of § 226.16(e) would apply to communications that are considered advertisements, and would not include disclosures required under § 226.5a and under § 226.6.

16(e)(2) Definitions

TILA Section 127(c)(6)(D)(i), as added by Section 1303(a) of the Bankruptcy Act, defines a temporary APR as a rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an APR that was in effect within 60 days before the date of mailing the application or solicitation. 15 U.S.C. 1637(c)(6)(D)(i). TILA Section 127(c)(6)(D)(ii) defines an ''introductory period'' as ''the maximum time period for which the temporary APR may be applicable.'' 15 U.S.C. 1637(c)(6)(D)(ii). The Board proposes to implement the definition of ''introductory period'' in § 226.16(e)(2) without change. With respect to the definition of ''temporary APR,'' the Board proposes to implement the term more broadly, as discussed below.

Since the term ''introductory rate'' is a commonly understood term that is currently used in Regulation Z, the Board proposes to use the term ''introductory rate'' in place of ''temporary APR'' for consistency and to facilitate compliance. Furthermore, for the reasons set forth below, the Board would implement the term more broadly to apply to any rate of interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period.

The statutory definition compares the temporary APR to an APR that was in effect within 60 days before the date of mailing of the application or solicitation. Since the advertised variable rate that will apply at the end of the introductory period in direct-mail credit card applications and solicitations (and accompanying promotional materials) must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)), the Board's proposed definition captures the same concept in more simple language. Furthermore, because the Board is proposing to extend these requirements to publicly available applications and solicitations as well as applications and solicitations offered through the Internet, the Board's proposed definition of ''introductory rate'' would also incorporate the timing requirements for variable rates under proposed §§ 226.5a(c)(2) and 226.5a(e)(4).

The statutory definition currently applies to offers where the introductory period is less than 1 year. The Board is proposing to extend the definition of ''introductory rate'' to include offers where the introductory period is a year or more, in order to promote the informed use of credit. Creditors, however, often offer an introductory rate for a year or more, and the Board believes that consumers would benefit from the application of the requirements imposed by the Bankruptcy Act on introductory rates to these types of offers as well. In addition, the requirements for the advertisement of ''discounted variable-rate plans'' under current comment 16(b)–6 are not limited to offers where the introductory period is less than 1 year, and the Board believes that these requirements should continue to apply to such advertised offers.

The requirements for ''discounted variable-rate plans'' under current comment 16(b)–6 apply solely to variable-rate plans. In adopting the proposed definition of ''introductory rate'' at § 226.16(e)(2), the Board would cover both variable- and nonvariable-rate plans under the requirements regarding the presentation of introductory rates. Current comment 16(b)–6 would be deleted as obsolete.

16(e)(3) Stating the Term ''Introductory''

Under TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, the term ''introductory'' must be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A). The Board solicited comment in the October 2005 ANPR on what type of guidance was appropriate with respect to this requirement. Q86.

Abbreviation. In the October 2005 ANPR, many commenters asked the Board to consider permitting creditors to use the term ''intro'' as an alternative to the word ''introductory.'' One commenter also asked the Board to consider permitting creditors to use terms that convey the same meaning (such as ''temporary''). Because ''intro'' is a commonly-understood abbreviation of the term ''introductory,'' the Board proposes to allow creditors to use ''intro'' as an alternative to the requirement to use the term ''introductory'' in new § 226.16(e)(3). Because the Bankruptcy Act requires the use of the term ''introductory,'' the Board does not propose to allow use of a different term.

Immediate proximity. Responses to the October 2005 ANPR suggested three general approaches to interpreting the meaning of ''immediate proximity:'' (1) Immediately preceding or following the

APR; (2) within the same sentence as the APR (or within a certain number of words); or (3) in the sentence immediately preceding or following the sentence with the APR. After considering comments, the Board is proposing to provide a safe harbor for creditors that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the temporary APR. This guidance is in proposed comment 16(e)–2. The Board believes that interpreting ''immediate proximity'' to mean adjacent to the rate may be too restrictive and would effectively ban phrases such as ''introductory balance transfer rate X percent.'' Moreover, the Board has proposed a safe harbor, recognizing that there may be instances where the term ''introductory'' may arguably appear in ''immediate proximity'' of the rate, yet not necessarily be in the same phrase as the rate, such as in a graphic.

16(e)(4) Stating the Introductory Period and Post-Introductory Rate

TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act, also requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a ''prominent location closely proximate to the first listing'' of the introductory APR (disclosures in the application and solicitation table are not covered). 15 U.S.C. 1637(c)(6)(A). The Board specifically solicited comments on this provision in the October 2005 ANPR. Q87–Q90.

Prominent location closely proximate. Industry comments received during the October 2005 ANPR generally advocated flexibility in interpreting the phrases ''prominent location'' and ''closely proximate.'' Consumer group commenters suggested very specific formatting requirements in interpreting these phrases, including minimum font size and placement requirements.

The Board believes flexible guidance is appropriate in interpreting ''prominent location closely proximate'' given the numerous ways this information may be presented. Accordingly, the Board is proposing a safe harbor in order to provide guidance on this issue. Specifically, the Board would provide a safe harbor for advertisers that place the time period in which the introductory period will end and the APR that will apply after the end of the introductory period in the same paragraph as the first listing of the introductory rate. This proposal is in proposed comment 16(e)–3. Congress's use of the term ''closely proximate'' may be distinguished from its use of the term ''immediate proximity'', and thus, the Board believes that guidance on the meaning of ''prominent location closely proximate'' should be more flexible than the guidance given for the meaning of ''immediate proximity'' in comment 16(e)–2.

Recognizing that there may be instances where the information may not appear in the same ''paragraph'' as the first listing and yet may still be considered in a prominent location closely proximate to the first listing (for example, in a graphic), the Board's guidance has been provided as a safe harbor. Consumer testing conducted for the Board suggests that placing this type of information in a footnote makes it much less likely the consumer will notice it. In light of the statutory provision providing that this information appear in a prominent location closely proximate to the listing, the Board believes that placing this information in footnotes would not be a prominent location closely proximate to the listing.

First listing. In the October 2005 ANPR, the Board solicited comments on which listing of the temporary APR should be considered the ''first listing'' other than the rate listed in the table required on or with credit card applications or solicitations. In particular, the Board requested comment on (1) which document within a multi-page mailing should be considered the one with the first listing, and (2) which listing of the introductory APR within a particular document should be considered the first listing. With respect to the first question, commenters suggested either (1) that the first listing should apply to the ''principal promotional document'' in the package, or (2) that the Board treat each separate document within a mailing as a separate solicitation such that the information would need to appear in a prominent location closely proximate to the first listing on each separate document. The ''principal promotional document'' is a concept used in connection with the placement of a prescreening opt-out notice under the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1681 *et seq.* The FTC, in its regulations related to the FCRA, defines the ''principal promotional document'' as ''the document designed to be seen first by the consumer such as the cover letter.'' 16 CFR 642.2(b).

After considering comments received during the ANPR, the Board is proposing in comment 16(e)–4 to provide that for a multi-page mailing or application or solicitation package, the first listing should apply solely to the ''principal promotional document'' in the package, unless the introductory rate is not listed in the principal promotional document and appears in another document in the package. If the introductory rate does not appear in the principal promotional document but appears in another document in the package, then the requirements apply to each separate document that lists the introductory rate. Proposed comment 16(e)–4 clarifies that the term ''principal promotional document'' includes solicitation letters. The Board's consumer testing efforts suggest that consumers are likely to read the principal promotional document. Applying the requirement to each document in a mailing/package would be unnecessary if the consumer will already have seen the introductory rate in the principal promotional document. If the introductory rate does not appear in the principal promotional document, however, the Board proposes that the requirements apply to the first listing of the introductory rate in each document in the package containing the introductory rate as it is not clear which document the consumer will read first in such circumstances.

With respect to the question of which listing of the introductory rate within a particular document should be considered the first listing, many industry commenters suggested that creditors be given flexibility in determining which listing is the first listing. Some commenters suggested that the first listing be the highest listing on the page while other commenters advocated the most prominent listing. After considering comments, the Board is proposing that the first listing be the most prominent listing of the introductory rate on the front of the first page of the document. Consumer testing conducted for the Board suggests that consumers may not necessarily read documents in an application/solicitation package from top to bottom. Instead, they may tend to look first to the pieces of information that are set forth most prominently on the document. As a result, the Board believes that the first listing (i.e., the one the consumer sees first) would not necessarily be the highest one on the page, especially if such listing is in an inconspicuous format, and instead, it would be the one that is most prominent to the consumer. In terms of judging which listing is the ''most prominent,'' the Board is proposing a safe harbor for the listing with the largest type size. While type size is one measure for judging the most prominent listing, the Board recognizes that there may be other ways to assess the most prominent listing independent of type size.

Post-introductory rate. The Board requested comment in the October 2005 ANPR regarding whether the Board should issue guidance with respect to listing the rate that will apply after the end of the introductory period. Q90. Most commenters agreed that advertisers should be permitted to list a range of rates. Consistent with the guidance given above for listing the APR in the table required for credit card applications and solicitations under § 226.5a(b)(1)(v), the Board is proposing that a range of rates may be listed as the rate that will apply after the introductory period if the specific rate for which the consumer will qualify will depend on later determinations of a consumer's creditworthiness. *See* section-by-section analysis to § 226.5a(b)(1). The Board proposes comment 16(e)–5 to be consistent with comment 5a(b)(1)–5. In addition, the Board solicits comment on whether advertisers may alternatively list only the highest rate that may apply instead of a range of rates. For example, if there are three rates that may apply (9.99 percent, 12.99 percent or 17.99 percent), instead of disclosing three rates (9.99 percent, 12.99 percent or 17.99 percent) or a range of rates (9.99 percent to 17.99 percent), card issuers should be permitted to provide only the highest rate (up to 17.99 percent).

16(e)(5) Envelope Excluded

TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act, specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). 15 U.S.C. 1637(c)(6)(B). This guidance is set forth in proposed § 226.16(e)(5).

In the October 2005 ANPR, the Board solicited comment on whether there should be any difference in guidance provided to applications and solicitations provided electronically with those that are provided in paper form. Q92. In response to comments received, the Board is proposing in § 226.16(e)(5) to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. In the Board's view, these devices are similar to envelopes or other enclosures in the direct mail context.

16(f) Alternative Disclosures—Television or Radio Advertisements

For radio and television advertisements, the Board is proposing to allow alternative disclosures to the ones required by § 226.16(b) if a triggering term is stated in the advertisement. Radio and television advertisements would still be required to disclose any APR applicable to the plan, consistent with the requirements in proposed § 226.16(b)(1)(ii); however, instead of the detailed information in proposed §§ 226.16(b)(1)(i) and (iii) (minimum or fixed payments, and annual or membership fees, respectively) an advertisement would be able to provide a toll-free telephone number that the consumer may call to receive more information.

This approach is consistent with the approach taken in the advertising rules for Regulation M (*See* § 213.7(f)). Given the space and time constraints on radio and television advertisements, the additional disclosures required by proposed §§ 226.16(b)(1)(i) and (iii) may go unnoticed by consumers or be difficult for them to retain and would therefore not provide a meaningful benefit to consumers. An alternative means of disclosure may be more effective in many cases given the nature of television and radio media.

While proposed § 226.16(f) is similar to § 213.7(f) in Regulation M, it is not identical. For example, § 213.7(f)(1)(ii) permits a leasing advertisement made through television or radio to direct the consumer to a written advertisement in a publication of general circulation in a community served by the media station. The Board believes that advertisers of open-end credit plans would be unlikely to use this option and has thus not proposed it for § 226.16(f).

16(g) Misleading Terms

Creditors often refer to an APR as ''fixed'' to denote an APR that is not tied to an index. However, the Board has found through consumer testing efforts that most participants did not appear to understand the term ''fixed'' in this manner. Participants also did not appear to understand that creditors often reserve the right to increase a ''fixed'' rate upon the occurrence of certain events (such as when a consumer pays late or goes over the credit limit) or for other reasons. Thus, consumer testing suggests many consumers believe a ''fixed'' rate does not change, such as with fixed-rate mortgage loans.

Therefore, to avoid consumer confusion and the uninformed use of credit, the Board proposes to restrict the term ''fixed'' to instances where the rate will not change for any reason. 15 U.S.C. 1601(a), 1604(a). Proposed § 226.16(g) prohibits the use of the term ''fixed'' or any similar term in describing an APR unless that rate will remain in effect unconditionally until the expiration of an advertised time period. If no time period is advertised, then the term ''fixed'' or any similar term may not be used unless the rate will remain in effect unconditionally until the plan is closed. For example, a creditor could describe a rate that is subject to change as non-indexed, to indicate that the rate will not change due to changes in the market. A creditor could not, however, describe a rate as ''unchanging'' or ''permanent'' unless the standard in proposed § 226.16(g) is met. Restricting the use of the term ''fixed'' is intended to help consumers distinguish rates that do not change for any reason from rates that can change for one reason or another.

Appendix E—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

Appendix E applies to card programs in which the card issuer and the seller are the same or related persons; no finance charge is imposed; cardholders are billed in full for each use of the card on a transaction-by-transaction basis; and no cumulative account is maintained reflecting transactions during a period of time such as a month. At the time the provisions now constituting Appendix E (originally adopted as an official Board interpretation to Regulation Z) were added to the regulation, they were intended to address card programs offered by automobile rental companies.

Appendix E specifies the provisions of Regulation Z that apply to credit card programs covered by the Appendix. For example, for the account-opening disclosures under § 226.6, the required disclosures are limited to penalty charges such as late charges, and to a disclosure of billing error rights and of any security interest. For the periodic statement disclosures under § 226.7, the required disclosures are limited to identification of transactions and an address for notifying the card issuer of billing errors. Further, since Appendix E card issuers do not issue periodic statements of account activity, Appendix E provides that these disclosures may be made on the invoice or statement sent to the consumer for each transaction. In general, the disclosures that this category of card issuers need not provide are those that are clearly inapplicable, either because the disclosures relate to finance charges, are based on a system in which periodic statements are generated, or apply to three-party credit cards (such as bank-issued credit cards).

The Board proposes to revise Appendix E by inserting material explaining what is meant by ''related persons.'' In addition, technical changes would be made, including numbering the paragraphs within the appendix and changing cross-references to conform to the renumbering of other provisions of Regulation Z.

The Board solicits comment on whether Appendix E should be revised to specify that the disclosures required under § 226.5a apply to card programs covered by the appendix. For the most part, the credit card application and solicitation disclosures required by § 226.5a appear to be inapplicable to this category of card programs because most of those disclosures relate to finance charges or APRs. However, a few of the § 226.5a disclosures could potentially apply, such as annual or membership fees and late charges. (Appendix E does not currently require a disclosure of annual or membership fees; comment is requested, however, on whether the appendix should be revised to require such a disclosure, if a transaction-by-transaction card issuer were to impose such a fee.) If few or no such card issuers impose fees covered by § 226.5a, there may be no need to revise Appendix E to apply these requirements. In addition, the value of such a revision may depend on whether transaction-by-transaction card issuers typically make credit card applications or solicitations available to consumers in the ways specified by § 226.5a, such as by direct mail, telephone solicitation, or as take-ones. On the other hand, if Appendix E were revised to apply § 226.5a to these card issuers, they would have to comply only to the extent the requirements are applicable. Thus, no burden would be imposed on card issuers that, for example, do not impose late-payment fees or annual fees, or do not conduct direct-mail credit card solicitations or other activities that come within § 226.5a.

The Board also requests comment on whether any other provisions of Regulation Z not currently specified in Appendix E as applicable to transaction-by-transaction card issuers (such as §§ 226.5b and 226.16) should be specified as being applicable, and on whether any provisions currently specified as being applicable should be deleted.

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

Appendix F provides guidance regarding the computation of the effective APR under § 226.14(c)(3), which applies to situations where the finance charge imposed during a billing cycle includes a transaction charge, such as a balance transfer fee or a cash advance fee. As discussed in the section-by-section analysis to §§ 226.7(a)(7) and (b)(7), and § 226.14, the Board is proposing two alternative approaches for computation and disclosure of the effective APR. Depending upon the alternative and upon whether or not the plan is home-secured, the creditor (1) may use proposed § 226.14(c)(3) or § 226.14(d)(3) if the finance charge for the billing cycle includes a transaction charge, or (2) would not be required to calculate and disclose an effective APR at all. The guidance in existing Appendix F would continue to apply to either proposed § 226.14(c)(3) or proposed § 226.14(d)(3). Therefore, the Board is not proposing changes to Appendix F except to add applicable cross references and to move the substance of footnote 1 to Appendix F to the text of the appendix. A cross-reference to proposed comment 14(d)(3)–3 is added to the staff commentary to Appendix F.

Appendix G—Open-End Model Forms and Clauses; Appendix H—Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to add or revise several model and sample forms to Appendix G. The new or revised model and samples forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. *See* section-by-section analysis to §§ 226.4(d)(3), 226.5a(b), 226.6(b)(4), 226.6(c)(2), 226.7(b), 226.9(a), 226.9(b), 226.9(c), 226.9(g) and 226.12(b). In addition, the Board proposes to add a new model clause and sample form relating to debt suspension coverage in Appendix H. These forms are discussed above in the section-by-section analysis of § 226.4(d)(3). In Appendix G, all the existing forms applicable to home-equity lines of credit (HELOCs) have been retained without revision. The Board anticipates considering changes to these forms when it reviews the home-equity disclosure requirements in Regulation Z.

The Board also proposes to revise or add commentary to the model and sample forms in Appendix G, as discussed below. The Board solicits comment on the proposed revisions below, as well as whether any additional commentary should be added to explain the model and sample forms contained in Appendix G.

Permissible changes to the model and sample forms. The commentary to appendices G and H currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. As discussed above, the Board is proposing format requirements with respect to certain disclosures applicable to open-end (not home-secured) plans, such as a tabular requirement for certain account-opening disclosures and certain change-in-terms disclosures. *See* § 226.5(a)(3). In addition, the Board is proposing revisions to certain model forms to improve their readability. *See* proposed G–2(A), G–3(A) and G–4(A). Thus, the Board would amend comment app. G and H–1 to indicate that with respect to certain model and sample forms in Appendix G, formatting changes may not be made to the model and sample forms.

In a technical revision, the Board proposes to delete comment app. G and H–1(vii) as obsolete. This comment allows a creditor to substitute appropriate references, such as ''bank,'' ''we'' or a specific name, for ''creditor'' in the account-opening disclosures, but none of the model or sample forms applicable to the account-opening disclosures uses the term ''creditor.''

Model clauses for notice of liability for unauthorized use and billing-error rights. Currently, Appendix G contains Model Clause G–2 which provides a model clause for the notice of liability for unauthorized use of a credit card. The Board is proposing revisions to Model Clause G–2 to improve its readability. This revised model clause is designated G–2(A). In addition, Appendix G currently contains Model Forms G–3 and G–4, which contain models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. Like with Model Clause G–2, the Board is proposing revisions to Model Forms G–3 and G–4 to improve readability.

The revised model forms are designated Model Form G–3(A) and G–4(A). The Board is proposing to revise comments app. G and H–2 and 3 to provide that for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may use the current forms (G–2, G–3, and G–4) or the revised forms (G–2(A), 3(A) and 4(A)). For open-end (not home-secured) plans, creditors may use the revised forms.

Model and sample forms applicable to disclosures for credit card applications and solicitations and account-opening disclosures. Currently, Appendix G contains several model forms related to the credit card application and solicitation disclosures required by § 226.5a. Current Model Form G–10(A) illustrates, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Current Sample G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and a penalty rate. Model Form G–10(A) and Sample G–10(B) would be substantially revised to reflect the proposed changes to § 226.5a, as discussed in the section-by-section analysis to § 226.5a. In addition, the Board proposes to add Sample G–10(C) to provide another example of how certain disclosures required by § 226.5a may be given. Under the proposal, current Model Form G–10(C) illustrating the tabular format disclosures for charge card applications and solicitations would be moved to G–10(D) and revised. The Board proposes to add Sample G–10(E) to provide an example of how certain disclosures in § 226.5a applicable to charge card applications and solicitations may be given. In addition, the Board proposes to add a model form and two sample forms to illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures. *See* proposed Model G–17(A) and Samples G–17(B) and G–17(C).

The Board also proposes to revise the existing commentary that provides guidance to creditors on how to use Model Forms and Samples G–10(A)–(E) and G–17(A)–(C). Currently, the commentary indicates that the disclosures required by § 226.5a may be arranged horizontally (where headings are at the top of the page) or vertically (where headings run down the page, as is shown in the Model Forms G–10(A), G–10(D) and G–17(A), and need not be highlighted aside from being included in the table. The Board proposes to delete this guidance and instead require that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G–10(A), G–10(D) and G–17(A), where a vertical format is used. The Board would no longer allow a horizontal format because such formats would be difficult for consumers to read, given the information that is required to be disclosed in the table. In addition, the Board proposes to delete the provision that disclosures in the tables need not be highlighted aside from being included in the table, as inconsistent with the proposed requirement that creditors must include certain rates and fees in the tables in bold text. *See* §§ 226.5a(a)(2)(iv) and 226.6(b)(4)(i)(C).

In addition, Model Form G–10(A) applicable to credit card applications and solicitations currently uses the heading ''Minimum Finance Charge'' for disclosing a minimum finance charge under § 226.5a(b)(3). The Board proposes to amend Model Form G–10(A) to provide two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3). The same two headings are proposed for Model Form G–17(A), the model form for the account-opening table required under § 226.6(b)(4). In the consumer testing conducted for the Board, many participants did not understand the term ''finance charge'' in this context. The term ''interest'' was more familiar to many participants. Under the proposal, if a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge.'' Other minimum finance charges should be disclosed under the heading ''Minimum Charge.''

Also, under the proposal, Model Forms G–10(A), G–10(D) and G–17(A) contain two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A). The Board proposes to provide guidance on when a creditor should use each heading. Under the proposal, if the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' to disclose fees for issuance or availability of credit, including the annual fee.

The Board also would revise the commentary to provide details about proposed sample forms G–10(B), G–10(C), G–17(B) and G–17(C) for credit card application and solicitation disclosures and account-opening disclosures. For example, the commentary indicates that samples G–10(B), G–10(C), G–17(B) and G–17(C) are designed to be printed on an 8x14 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Ariel font style, except for the purchase APR which is shown in 16-point type).
2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type.
3. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples, in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose three components: (a) The applicable balance transfer rate, (b) a cross-reference to the balance transfer fee, and (c) a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the form discloses two components: (a) The late-payment fee, and (b) the cross-reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the table.
4. Standard spacing between words and characters.
5. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.
6. Sufficient contrast between the text and the background. Black text was used on white paper.

While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encourages issuers to consider these techniques when disclosing information in the table, to ensure that the information is presented in a readable format.

Model and sample forms for periodic statements. The Board is proposing to add several model forms for periodic statements disclosures that creditors may use to comply with the requirements in proposed § 226.7(b) applicable to open-end (not home-secured) plans. As discussed above in the section-by-section analysis of § 226.7(a), for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may comply with the current rules applicable to periodic statement disclosures in § 226.7(a) or comply with the new rules applicable to periodic statement disclosures in § 226.7(b). The Board proposes to added comment app. G and H–8 to provide that for HELOCs subject to § 226.5b, if a creditor chooses to comply with the new periodic statement requirements in § 226.7(b), the creditor may use Samples G–18(A)–(F) to comply with the requirements in § 226.7(b).

Appendix M1—Generic Repayment Estimates

As discussed in the section-by-section analysis to § 226.7(b)(12), Section 1301(a) of the Bankruptcy Act requires creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the account. 15 U.S.C. § 1637(b)(11)(F). The Act requires creditors, the FTC and the Board to provide estimates that are based on tables created by the Board that estimate repayment periods for different minimum monthly payment amounts, interest rates, and outstanding balances. Instead of issuing a table, the Board proposes to issue guidance in Appendix M1 to card issuers and the FTC for how to calculate this generic repayment estimate. The Board would use the same guidance to calculate the generic repayment estimates given through its toll-free telephone number. The Board expects that this guidance would be more useful than a table, because the guidance will facilitate the use of automated systems to provide the required disclosures, although the guidance also can be used to generate a table.

Under Section 1301(a) of the Bankruptcy Act, a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. 15 U.S.C. 1637(b)(11)(I)–(K). The Board proposes new Appendix M2 to provide guidance to issuers on how to calculate the actual repayment disclosure.

Calculating generic repayment estimates. Proposed Appendix M1 provides guidance on how to calculate the generic repayment estimates. In the October 2005 ANPR, the Board noted that the Bankruptcy Act directs the Board in estimating repayment periods to allow for a significant number of different minimum payment amounts, interest rates, and outstanding balances. With respect to the toll-free telephone numbers set up by the Board and the FTC, information about the consumers' account terms must come from consumers because the information is not available to the Board or the FTC. Consumers would need convenient access to this information to request an estimated repayment period. Because consumers' outstanding account balances appear on their monthly statements, consumers are able to provide that amount when requesting an estimate of the repayment period. Issues arise, however, with respect to the minimum payment requirement and interest rate information.

Periodic statements do not disclose the fixed percentage or formula used to determine the minimum dollar amount that must be paid each month. The statements only disclose the minimum dollar amount that must be paid for the current statement period, which would vary each month as the account balance changes. Furthermore, while periodic statements must disclose all APRs applicable to the account, the statements may, but do not necessarily, indicate the portion of the account balance subject to each APR. This information is also needed to estimate the actual repayment period.

The Board sought commenters' views regarding three basic approaches for developing a system to calculate estimated repayment periods for consumers who call the toll-free telephone number. The three approaches were:

(1) Prompting consumers to provide an account balance, a minimum payment formula, and all applicable APRs in order to obtain an estimated repayment period. For information about minimum payments and APRs that is not currently disclosed on periodic statements, the Board could require additional disclosures on those statements. But the Board also could develop guidance that makes assumptions about these variables for a ''typical'' account.

(2) Prompting consumers to input information, or using assumptions based on a ''typical'' account to calculate an estimated repayment period—but also giving creditors the option to input information from their own systems regarding consumers' account terms, to provide more accurate estimates. Estimates provided by creditors that elect this option would differ somewhat from the estimates provided by other creditors, the Board, and the FTC.

(3) Prompting consumers to provide their account balance, but *requiring* creditors to input information from their own systems regarding the account's minimum payment requirement, APRs, and the portion of the balance subject to each APR. These estimates would be more accurate, but would impose additional compliance burdens, and would not necessarily reflect consumers' actual repayment periods because of the use of several other assumptions.

In response to the October 2005 ANPR, industry commenters urged the Board not to require issuers to program their systems to obtain consumers' account information from their account management systems to calculate the generic repayment estimate. These commenters indicated that such a requirement was not contemplated by the statute. Several consumer group commenters indicated that issuers should be required to use inputs from their own systems about minimum monthly payment formulas, APRs, and account balances applicable to an account in calculating the generic repayment estimate.

The Board is proposing to allow credit card issuers and the FTC to use a ''consumer input'' system to collect information from the consumer to calculate the generic repayment estimate. The Board would also use a ''consumer input'' system for its toll-free telephone number. For example, certain information is needed to calculate the generic repayment estimate, such as the outstanding balance on the account and the APR applicable to the account. The Board's proposed rule would allow issuers and the FTC to prompt the consumer to input this information so that the generic repayment estimate can be calculated. Although issuers have the ability to program their systems to obtain consumers' account information from their account management systems, the Board is not proposing that issuers be required to do so. Allowing issuers to use a ''consumer input'' system in calculating the generic repayment estimate preserves the distinction between estimates based on the Board table and actual repayment disclosures contemplated in the statute.

In proposed Appendix M1, the Board sets forth guidance for credit card issuers and the FTC in determining the minimum payment formula, the APR, and the outstanding balance to use in calculating the generic repayment estimates. With respect to other terms that could impact the calculation of the generic repayment estimate, the Board proposes to set forth assumptions about these terms that issuers and the FTC must use.

1. *Minimum payment formula.* In the October 2005 ANPR, the Board sought comment on whether the Board should select a ''typical'' minimum payment formula that issuers and the FTC must use in calculating the generic repayment estimates. Q66. In response to the ANPR, many industry commenters acknowledged that there is no ''typical'' minimum payment formula for credit cards. Nonetheless, some industry commenters indicated that the Board should use a minimum formula of 1 percent of the outstanding balance plus the accrued finance charges for the billing period, with a minimum payment of $20. Another industry commenter indicated that the Board should require that issuers, the FTC and the Board use the minimum payment formula in the statutory examples to calculate the generic repayment estimate. As indicated above, several consumer groups indicated that issuers should be required to use the minimum payment formula(s) that is applicable to the consumer's account. These commenters indicated that the FTC and the Board should be required to use a minimum payment formula that is identified by the Board as producing the ''worst-case scenario'' repayment estimate.

As indicated in Appendix M1, the Board proposes to require credit card issuers to use the minimum payment formula that applies to most of the issuer's accounts. The Board proposes different rules for general-purpose credit cards and retail credit cards in selecting the ''most common'' minimum payment formula. The Board proposes to define retail credit cards as credit cards that are issued by a retailer for use only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control. General-purpose credit cards are defined as credit cards that are not retail credit cards.

When calculating the generic repayment estimate for general-purpose credit cards, card issuers must use the minimum payment formula that applies to most of its general-purpose credit card accounts. The issuer must use this ''most common'' formula to calculate the generic repayment estimate for all of its general-purpose credit card accounts, regardless of whether this formula applies to a particular account. Proposed Appendix M1 contains additional guidance to issuers of general-purpose credit cards in complying with the ''most common'' formula approach. The Board solicits comment on the need for guidance if two or more formulas could apply equally to the same number of accounts.

When calculating the generic repayment estimate for retail credit cards, credit card issuers must use the minimum payment formula that most commonly applies to its retail credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers must group credit card accounts relating to each retailer separately, and determine the minimum formula that is most common to each retailer. For example, if Issuer A, the owner of Retailer A and Retailer B, issues separate cards for Retailer A and Retailer B, the proposal would require Issuer A to determine the most common formula separately for each retailer (A and B). Under the proposal, the issuer must use the ''most common'' formula for each retailer to calculate the generic repayment estimate for the retail credit card accounts related to each retailer, regardless of whether this formula applies to a particular account. Proposed Appendix M1 provides additional guidance to issuers of retail credit cards on how to comply with the ''most common'' formula approach. The Board solicits comment on whether Issuer A in the example above should be permitted to determine a single ''most common'' formula for all retailers under its common ownership or control, and if so, what the standard of affiliation should be. The Board also solicits comment on the need for guidance if two or more formulas could apply equally to the same number of accounts.

The Board believes that the ''most common'' approach described above is preferable to using a ''typical'' minimum payment formula identified by the Board for several reasons. First, as acknowledged by the industry commenters, there is no ''typical'' minimum payment formula that generally applies to credit card accounts. Informally, the Board gathered data on the minimum payment formulas used by the top 10 issuers of general-purpose credit cards. With respect to those 10 issuers, there was no minimum payment formula that most of the issuers used. Second, the minimum payment formula can have a significant impact on the calculation of the generic repayment estimate. For example, based on the minimum payment formulas used by the top 10 issuers, the repayment period for paying a $1,000 balance at a 13.99 percent APR if only minimum payments are made can range from 6 years to 12 years depending on the issuer.

In addition, it appears that at least for general-purpose credit cards, issuers typically use the same or similar minimum payment formula for their entire credit card portfolio. Thus, for those types of credit cards, the ''most common'' minimum payment formula identified by an issuer often will match the actual formula used on a consumer's account. The Board recognizes that in some cases the ''most common'' minimum payment formula will not match the actual formula used on a consumer's account, for example, where a consumer has opted out of a change in the minimum payment formula, and the consumer is paying off the balance under the old minimum payment formula. The Board also recognizes that allowing retail card issuers to use one minimum payment formula under the ''most common'' formula approach to calculate the generic repayment estimate even when multiple minimum payment formulas apply to the account yields a less accurate estimate than if the issuer were required to use all the minimum payment formulas applicable to a consumer's account. Nonetheless, short of requiring issuers to obtain the actual minimum payment formula(s) applicable to a consumer's account from the issuer's account management systems to calculate the generic repayment estimate, which does not appear to be contemplated by the statute, the Board believes that the approach of requiring issuers to identify their ''most common'' minimum payment formulas to calculate the generic repayment estimates is a preferable approach than allowing issuers to use a ''typical'' formula identified by the Board.

As discussed in the section-by-section analysis to § 226.7(b)12), the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less to obtain generic repayment estimates. The Board proposes to use the following minimum payment formula to calculate the generic repayment estimates: either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance. The Board proposes to use the same formula as in the statutory example because the Board is not aware of any ''typical'' minimum payment formula that applies to general-purpose credit cards issued by smaller depository institutions. For the same reasons, the Board proposes that the FTC use the 5 percent minimum payment formula used in the $300 example in the statute to calculate the generic repayment estimates given through the FTC's toll-free telephone number.

2. *Annual percentage rates.* In the October 2005 ANPR, the Board noted that the statute's hypothetical repayment examples assume that a single APR applies to a single account balance. But credit card accounts can have multiple APRs. The APR may differ for purchases, cash advances, and balance transfers. A card issuer may have a promotional APR that applies to the initial balance transfer and a separate APR for other balance transfers. Although all the APRs for accounts are disclosed on periodic statements, calculating the repayment period requires information about what percentage or amount of the total ending balance is subject to each APR, and what payment allocation method is used. 15 U.S.C. 1637(b)(5); current § 226.7(d). Currently, the total ending balance is required to be disclosed, but not the portion of the cycle's ending balance that is subject to each APR. 15 U.S.C. 1637(b)(8); current § 226.7(i). (Some creditors may voluntarily disclose such information on periodic statements.) For example, assuming a $1,000 outstanding balance on an account with a 12 percent APR for purchases and a 19.5 percent APR on cash advances, the consumer will know from his or her periodic statement the amount of the total outstanding balance ($1,000), but may not know the percentage or amount of the ending balance is subject to the 12 percent rate and what amount of the ending balance is subject to the 19.5 percent rate. Creditors know the portion of the cycle's ending balance that is subject to each APR, and could develop automated systems that incorporate this information as part of their calculation. But again, the toll-free telephone systems developed by the Board and FTC would have to depend solely on data provided by the consumer.

If multiple APRs apply to the outstanding balance, using the lowest APR to calculate the repayment period would estimate repayment periods that are shorter for some consumers, depending on the components of the balance, while using the highest APR would estimate repayment periods that are longer for some consumers. How much the repayment periods are underestimated or overestimated in each of these cases would depend on which rate applies to the outstanding balance. Using an average of the multiple rates may either overestimate or underestimate the repayment period depending on which rate applies to the outstanding balance. It is unclear whether detailed transaction data about how consumers use their credit card accounts would support a finding that there is a ''typical'' approach that would provide the best estimate of the repayment periods in most cases.

In the October 2005 ANPR, the Board solicited comment on whether it would be appropriate for accounts that have multiple APRs to calculate an estimated repayment period using a single APR, and if so, which APR for the account should be used. Q71. Most industry commenters suggested that the Board use a single APR. They pointed out that it would be impractical to use multiple APRs for the generic repayment estimate. Consumers would need to understand and input multiple APRs and balances that apply to the accounts (as well as any expiration dates and APRs that apply after any promotional APRs expire). The complexity and effort required to accommodate multiple APRs would be unduly burdensome for consumers, which could discourage consumers from using such an approach, and for creditors. In terms of which APR on the account to use to calculate the generic repayment estimate, some industry commenters indicated that the purchase APR should be used because this is the rate that most typically applies to the majority of the balances on consumers' accounts. Other industry commenters indicated that the highest APR on the account should be used to calculate the generic repayment estimates because this would provide consumers with the ''worst-case scenario.'' Several consumer groups indicated that the Board should require issuers to use all the APRs applicable to a consumer's account in calculating the generic repayment estimates.

The Board proposes to require that the generic repayment estimate be calculated using a single APR, even for accounts that have multiple APRs. As indicated above, the Board does not believe that the statute contemplates that issuers be required to use their account management systems to disclose an estimate based on all of the APRs applicable to a consumer's account and the actual balances to which those rates apply. The Board also agrees with several industry commenters that the complexity and effort required to accommodate multiple APRs using a ''consumer-input'' system would be unduly burdensome. In selecting the single APR to be used in calculating the generic repayment estimates, the Board proposes to require that credit card issuers, and the FTC use the highest APR on which the consumer has outstanding balances. As proposed, an issuer and the FTC may use an automated system to prompt the consumer to enter in the highest APR on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response. The Board would follow the same approach in calculating the generic repayment estimates for its toll-free telephone number. The Board recognizes that using the highest APR on which a consumer has an outstanding balance will overestimate the repayment period when the consumer has outstanding balances at lower APRs as well. Nonetheless, allowing issuers to use the purchase APR on the account to calculate the repayment period would underestimate the repayment period, if a consumer also has balances subject to higher APRs, such as cash advance balances. The Board believes that an overestimate of the repayment period is a better approach for purposes of this disclosure than an underestimate of the repayment period because it gives consumers the worst-case estimate of how long it may take to pay off their balance.

3. *Outstanding balance.* As discussed above, because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. The Board proposes that when calculating the generic repayment estimate, credit card issuers and the FTC must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle to calculate the generic repayment estimates. As proposed, an issuer and the FTC may use an automated system to prompt the consumer to enter in the outstanding balance included on the last periodic statement received, and calculate the generic repayment estimate based on the consumer's response. The Board would

follow the same approach in calculating the generic repayment estimates for its toll-free telephone number.

Other terms. In the October 2005 ANPR, the Board noted that Section 1301(a) of the Bankruptcy Act appears to contemplate that the generic repayment estimate should be calculated based on three variables: The minimum payment formula, the APR, and the outstanding balance. Nonetheless, a number of other assumptions can also affect the calculation of a repayment period. For example, the hypothetical examples that must be disclosed on periodic statements incorporate the following assumptions, in addition to the statutory assumptions that only minimum monthly payments are made each month, and no additional extensions of credit are obtained: (1) The balance computation method used is the previous-balance method and finance charges are based on the beginning balance for the cycle; (2) no grace period applies to any portion of the balance; and (3) when the account balance becomes less than the required minimum payment, the receipt of the final amount in full completely pays off the account. In other words, there is no residual finance charge that accrues in the month when the final bill is paid in full.

In the October 2005 ANPR, the Board requested comment on whether the Board should incorporate the above three assumptions into the calculation of the generic repayment estimates. Q67. Most industry commenters generally favored using the above three assumptions in the calculation of the generic repayment estimates. One consumer group commenter indicated that the Board should use ''worst-case scenario'' assumptions in calculating the generic repayment estimates.

1. *Balance computation method.* Instead of using the previous-balance method used in the statutory example, the Board proposes to use the average daily balance method for purposes of calculating the generic repayment estimate. The average daily balance method is more commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. The Board proposes to assume that all months are the same length. In addition, in the absence of data on when consumers typically make their payments each month, the Board proposes to assume that payments are credited on the last day of the month.

2. *Grace period.* The Board proposes to assume that no grace period exists. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be ''revolving'' or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the consumer calls to obtain the estimate, and that no grace period applies. This assumption about the grace period is also consistent with the Board's proposal to exempt issuers from providing the minimum payment disclosures to consumers that have paid their balances in full for two consecutive months.

3. *Residual interest.* When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the statutory examples assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. The Board proposes to make these same assumptions with respect to the calculation of the generic repayment estimates. These assumptions are necessary to have a finite solution to the repayment period calculation. Without these assumptions, the repayment period could be infinite.

Disclosing the generic repayment estimates to consumers. The Board proposes in Appendix M1 to provide guidance regarding how the generic repayment estimate must be disclosed to consumers. As discussed in more detail below, credit card issuers and the FTC would be required to provide certain required disclosures to consumers in responding to a request through a toll-free telephone number for generic repayment estimates. In addition, issuers and the FTC would be permitted to provide certain other information to consumers, so long as that permitted information is disclosed after the required information. The Board would follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

1. *Required disclosures.* In the October 2005 ANPR, the Board requested comment on what key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period. Q76. Some commenters indicated that a number of assumptions should be disclosed to consumers, such as that the estimated repayment period is based on the assumption there will be no new transactions, no late payments, no changes in the APRs and the minimum payment formula, and that only minimum payments are made. Other commenters indicated that the Board should only require a more general statement that the repayment period provided is only an estimate and the actual repayment period would differ based on a number of factors related to the consumers' behavior and the particular terms of their account.

As the rule is proposed, credit card issuers and the FTC would be required to provide the following information when responding to a request for generic repayment estimates through a toll-free telephone number: (1) The generic repayment estimate; (2) the beginning balance on which the generic repayment estimate is calculated; (3) the APR on which the generic repayment estimate is calculated; (4) the assumptions that only minimum payments are made and no other amounts are added to the balance; and (5) the fact that the repayment period is an estimate, and the actual time it may take to pay off the balance if only making minimum payment will differ based on the consumer's account terms and future account activity. The Board proposes to include a model form in Appendix M1 that credit card issuers and the FTC may use to comply with the above disclosure requirements. The Board is proposing to require a brief statement that the repayment period is an estimate rather than include a list of assumptions used to calculate the estimate, because the Board believes the brief statement is more helpful to consumers. The many assumptions that are necessary to calculate a repayment period are complex and unlikely to be meaningful or useful to most consumers. Nonetheless, the Board proposes to allow issuers and the FTC to disclose through the toll-free telephone number the assumptions used to calculate the generic repayment estimates, so long as this information is disclosed after the required information described above. The Board would follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

2. *Negative amortization.* Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle. Several major credit card issuers have established minimum payment requirements that prevent prolonged negative amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2 percent of the

outstanding balance, regardless of the finance charges or fees incurred). If negative amortization occurs when calculating the repayment estimate, issuers and the FTC would be required to disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by making only the minimum payment. As proposed, Appendix M1 contains a model form that issuers and the FTC may use to disclose to the consumer that negative amortization is occurring. The Board would follow the same approach in disclosing through its toll-free telephone number that negative amortization is occurring.

If creditors use a minimum payment formula that allows for negative amortization, the Board believes that consumers should be told that negative amortization is occurring. The Board recognizes that in some cases because of the assumptions used to calculate the generic repayment estimate, the estimate may indicate that negative amortization is occurring, when in fact, if the estimate was based on the consumer's actual account terms, negative amortization would not occur. The Board strongly encourages issuers to use the actual repayment disclosure provided in proposed Appendix M2 in these instances to avoid giving inaccurate information to consumers.

3. *Permitted disclosures.* As the rule is proposed, credit card issuers and the FTC may provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as this permitted information is given after the required disclosures: (1) A description of the assumptions used to calculate the generic repayment estimate; (2) an estimate of the length of time it would take to repay the outstanding balance if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount; (3) an estimate of the length of time it would take to repay the outstanding balance if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment; (4) the monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period, (5) a reference to Web sites that contains minimum payment calculators; and (6) the total interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. The Board would follow the same approach in disclosing permitted information through its toll-free telephone number.

In consumer testing conducted for the Board, several participants reviewed a disclosure that provided an estimate of the time it would take to pay off a $1,000 balance at a 17 percent APR, if the consumer paid $10 more than the minimum payment each month. Most participants that reviewed this disclosure found it to be useful. Thus, the Board is proposing to allow credit card issuers and the FTC, via the toll-free telephone number, to provide this type of disclosure to consumers, as well as other relevant repayment information. The Board believes that consumers may find this information helpful in making decisions about how much to pay each month.

In addition, in the October 2005 ANPR, the Board solicited comment on whether any creditors currently offer web-based calculation tools that permit consumers to obtain estimates of repayment periods. Several industry commenters indicated that they do offer such web-based calculation tools. In addition, other industry commenters indicated that such tools are available on the Internet from a variety of sources. For example, these Web sites may provide calculators that provide the monthly payment amount that would be required to pay off a particular balance within a specific number of months indicated by the consumer, and the total interest that would be paid during that period. Because these types of Web sites might be useful to consumers to obtain additional information about repayment periods, the Board proposes to allow issuers, and the FTC to provide Internet addresses for these Web sites as part of responding to a request for the generic repayment estimate through a toll-free telephone number.

Appendix M2—Actual Repayment Disclosures

As indicated above, Section 1301(a) of the Bankruptcy Act allows creditors to forego using the toll-free telephone number to provide a generic repayment estimate if the creditor instead provides through the toll-free telephone number the ''actual number of months'' to repay the consumer's account. In the October 2005 ANPR, the Board requested comment on whether the Board should provide guidance on the how to calculate the actual repayment disclosures. Q77. Commenters generally favored the Board providing such guidance because without this guidance, issuers would be less likely to provide the actual repayment disclosures. The Board proposes to provide in Appendix M2 guidance to credit card issuers on how to calculate the actual repayment disclosure to encourage issuers to provide these estimates.

Calculating the actual repayment disclosures. As a general matter, the Board is proposing that credit card issuers calculate the actual repayment disclosure for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosure, the Board proposes to allow issuers to make certain assumption about these terms.

1. *Minimum payment formulas.* Generally, when calculating actual repayment disclosures, the Board proposes that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. The Board proposes to allow issuers to disregard promotional terms that may be currently applicable to a consumer account when calculating the actual repayment disclosure. Specifically, if any promotional terms related to payments currently apply to a cardholder's account, such as a ''deferred payment plan'' where a consumer is not required to make payments on the account for a certain period of time, credit card issuers may assume the promotional terms do not apply, and use the minimum payment formula(s) that would currently apply without regard to the promotional terms. Allowing issuers to disregard promotional terms on accounts eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

In addition, in response to the October 2005 ANPR, one commenter indicated that the issuers should not be required in calculating the actual repayment disclosure to develop different estimating methodologies for minimum payment formulas that apply to atypical customers. The commenter indicated that this might occur, for example, where customers have opted out of a newer version of a creditor's minimum payment formula, customers have received test versions of newer minimum payment formulas, or customers have received a relatively unique product with relatively unique versions of the creditor's basic minimum payment formula. The commenter indicated that requiring creditors to develop special estimating methodologies for such small groups of customers would impose significant systems development costs, operational complexities, and similar burdens on creditors in excess of benefits to those customers.

The Board solicits additional comment on why an exception from the general requirement that the actual repayment estimate should be based on the minimum payment formula(s) applicable to a consumer's account is needed for atypical customers. Are the accounts for these atypical customers contained on separate periodic statements systems from other customers? If not, would not the issuer need to make changes only to one periodic statement system to obtain the minimum payment formula(s) applicable to a consumer's account, even if the minimum payment formulas applicable to the consumer's account were atypical?

2. *Annual percentage rates.* Generally, when calculating actual repayment disclosures, the Board proposes that credit card issuers must use each of the APRs that currently apply to a consumer's account, based on the portion of the balance to which that rate applies. For the reason discussed above, the Board proposes to allow issuers to disregard promotional APRs that may currently apply to a consumer's account. Specifically, if any promotional terms related to APRs currently apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers may assume the promotional terms do not apply, and use the APRs that currently would apply without regard to the promotional terms.

3. *Outstanding balance.* When calculating the actual repayment disclosures, the Board proposes that credit card issuers must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle. Issuers would not be required to take into account any transactions consumers may have made since the last billing cycle. This rule makes it easier for issuers to place the estimate on the periodic statement, because the outstanding balance used to calculate the actual repayment disclosure would be the same as the outstanding balance shown on the periodic statement.

4. *Other terms.* As discussed above, as a general matter, the Board is proposing that issuers calculate the actual repayment disclosures for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosures, the Board proposes to allow issuers to make certain assumptions about these terms. For example, the Board would allow issuers to make the same assumptions about balance computation method, grace period, and residual interest as are allowed for the generic repayment estimates. In addition, the Board proposes to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account. This assumption is consistent with typical industry practice regarding how issuers allocate payments. Allowing issuers to make these assumptions eases compliance burden for issuers, without a significant impact on the accuracy of the actual repayment disclosures.

Disclosing the actual repayment disclosures to consumers through the toll-free telephone number or on the periodic statement. The Board proposes in Appendix M2 to provide guidance regarding how the actual repayment disclosure must be disclosed to consumers if a toll-free telephone number is used or if the actual repayment disclosure is placed on the periodic statement. The Board proposes similar rules with respect to disclosing the actual repayment disclosures as are being proposed with respect to the generic repayment estimate. Specifically, the Board proposes to require credit card issuers to disclose certain information when providing the actual repayment disclosure, and permits the issuers to disclose other related information, so long as that permitted information is disclosed after the required information. *See* proposed Appendix M2.

Appendix M3—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

Proposed Appendix M3 provides samples calculations for the generic repayment estimate and the actual repayment disclosures discussed in appendices M1 and M2. Specifically, proposed Appendix M3 contains an example of how to calculate the generic repayment estimate using the guidance in Appendix M1 where the APR is 17 percent, the outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. In addition, proposed Appendix M3 also provides an example of how to calculate the actual repayment disclosure using the guidance in Appendix M2 where three APRs apply, the total outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The sample calculations in Appendix M3 are written in SAS code.

VII. Initial Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing an initial regulatory flexibility analysis for the proposed amendment to Regulation Z.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

1. *Reasons, statement of objectives and legal basis for the proposed rule.* The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account. Accordingly, the Board is proposing changes to format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The following sections of the Supplementary Information above describe in detail the reasons, objectives, and legal basis for each component of the proposed rule:

• A high-level summary of the major changes being proposed is in II. Summary of Major Proposed Changes, and a more detailed discussion is in V. Discussion of Major Proposed Revisions and VI. Section-by-section Analysis.

• The Board's major sources of rulemaking authority pursuant to TILA are summarized in IV. The Board's Rulemaking Authority. More detailed information regarding the source of rulemaking authority for each individual proposed change, as well as the rulemaking authority for certain changes mandated by the Bankruptcy Act, are discussed in VI. Section-by-section Analysis.

2. *Description of small entities to which the proposed rule would apply.* The total number of small entities likely to be affected by the proposal is

unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. See § 226.1(c)(1).[19] Based on December 2006 call report data, there are approximately 13,000 depository institutions in the United States that have assets of $165 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. Of them, there were 2,293 banks, 3,603 insured credit unions, and 33 other thrift institutions with credit card assets (or securitizations), and total assets less than $165 million. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.[20] There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the proposed rule.

The effect of the proposed revisions to Regulation Z on small entities also is unknown. Small entities would be required to, among other things, conform their open-end credit disclosures, including those in solicitations, account opening materials, periodic statements, and change-in-terms notices, and advertisements to the revised rules. The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities. The Board seeks information and comment on the effects of the proposed rules on small entities.

3. *Projected reporting, recordkeeping and other compliance requirements of the proposed rule.* The compliance requirements of the proposed rules are described in VI. Section-by-section Analysis. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

4. *Other federal rules.* As noted in the section-by-section analysis for § 226.13(i), there is a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. The Board has not identified any other federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

5. *Significant alternatives to the proposed revisions.* As previously noted, the proposed rule implements the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, the Board is directed to implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks with this proposed rule to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed in VI. Section-by-section Analysis, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding regarding open-end credit products.

The Board welcomes comments on any significant alternatives, consistent with TILA and the Bankruptcy Act, that would minimize the impact of the proposed rule on small entities.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending

[19] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes.'' Section 226.1(c)(1).

[20] Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p 3.

companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other creditors. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 552,398 hours for the 1,172 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 73,240 hours, from 552,398 to 625,638 hours. The total one-time burden increase, as well as the estimates of the one-time burden increase associated with each major section of the proposed rule as set forth below, represent averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. (Furthermore, this one-time burden estimate does not include the burden addressing electronic disclosures as announced in a separate proposed rulemaking (Docket No. R–1284)). In addition, the Federal Reserve estimates that, on a continuing basis, the proposed revisions to the rules governing change-in-terms notices would increase the frequency with which such notices are required, and that this change would increase the total annual burden on a continuing basis from 552,398 to 607,759 hours.

As discussed in the preamble, the Federal Reserve proposes changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The proposed revisions to the application and solicitation disclosures are intended to make the content of those disclosures more meaningful and easier for consumers to use. The Federal Reserve estimates that 279 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.5a and estimates the annual one-time burden to be 2,232 hours.

The proposed revisions to the account-opening disclosures are intended to make the information in those disclosures more conspicuous and easier for consumers to read. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.6 and estimates the annual one-time burden to be 9,376 hours.

The proposed revisions to the periodic statement disclosures are intended to make the information in those disclosures more understandable, primarily through changes to the format requirements, such as by grouping fees, interest charges, and transactions together. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 40 hours (one week) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.7 and estimates the annual one-time burden to be 42,880 hours.

The proposed revisions to the change-in-terms notices would expand the circumstances under which consumers receive written notice of changes in the terms (e.g., an increase in the interest rate) applicable to their accounts, and increase the amount of time these notices must be sent before the change becomes effective. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve will take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.9(c) and estimates the annual one-time burden to be 9,376 hours; In addition, the Federal Reserve estimates that, on a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency for from 2,500 to 3,750. The estimated annual burden for change-in-terms notices would increase from 36,907 to 55,361 hours.

The proposed changes to the advertising provisions would revise the rules governing advertising of open-end credit to help improve consumer understanding of the credit terms offered. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.16 and estimates the annual one-time burden to be 9,376 hours.

Additionally, the Federal Reserve proposes to revise the definition of open-end credit in § 226.2(a)(20) to ensure that the appropriate (i.e., open-end or closed-end) disclosures are provided in connection with multifeatured plans. The Federal Reserve also proposes to extend the applicability of the rules in § 226.4 for debt cancellation products to debt suspension products. The Federal Reserve estimates the burden to comply with the § 226.2(a)(20) provisions for open-end credit would be minimal. The burden associated with reprogramming and updating a respondent's systems to comply with the proposed debt suspension disclosure requirements in § 226.4, is included in the one-time burden estimates for application and solicitation and periodic statement disclosures mentioned above.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 12,324,037 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 1,389,600 hours to 13,713,637 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency, thus increasing the total annual burden on a continuing basis from 12,324,037 to 13,516,584 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

IX. Redesignation Table

In reviewing the rules affecting open-end credit, The Board has proposed organizational revisions that are designed to make the regulation easier to use. The following table indicates the proposed redesignations.

Current	Redesignation
Footnote 3	§ 226.2(a)(17)(v).
Footnote 4	Comment 3–1.
Comment 3(a)–2	Comment 3(a)–3.
Comment 3(a)–3	Comment 3(a)–4.
Comment 3(a)–4	Comment 3(a)–5.
Comment 3(a)–5	Comment 3(a)–6.
Comment 3(a)–6	Comment 3(a)–8.
Comment 3(a)–7	Comment 3(a)–9.
Comment 3(a)–8	Comment 3(a)–10.
Footnote 5	§ 226.4(d)(2).
Footnote 6	§ 226.4(d)(2)(i).
Footnote 7	§ 226.5(a)(1)(ii)(A).
Footnote 8	§ 226.5(a)(1)(ii)(B).
§ 226.5(a)(2)	§ 226.5(a)(2)(ii).
Footnote 9	§ 226.5(a)(2)(ii).
§ 226.5(a)(3)	§ 226.5(a)(3)(i).
§ 226.5(a)(4)	§ 226.5(a)(3)(ii).
§ 226.5(a)(5)	§ 226.5(a)(1)(iii).
Comment 5(a)(1)–1	Comments 5(a)(1)–1 and 5(a)(1)–2.
Comment 5(a)(1)–2	Comment 5(a)(1)–4.
Footnote 10	§ 226.5(b)(2)(iii).
Comment 5(b)(1)–1	§ 226.5(b)(1)(iv)–(v); Comment 5(b)(1)(i)–1.
§ 226.5a(a)(2)(i) (prominent location)	§ 226.5a(a)(2)(vi).
§ 226.5a(a)(2)(iii)	§ 226.5(a)(2)(iii).
§ 226.5a(a)(2)(iv)	§ 226.5(a)(2)(i).
§ 226.5a(a)(3)	§ 226.5a(a)(5).
§ 226.5a(a)(4)	§ 226.5a(a)(3).
§ 226.5a(a)(5)	§ 226.5a(a)(4).
§ 226.5a(b)(1)(ii)); Comment 5a(c)–1	§ 226.5a(c)(2)(i); § 226.5a(e)(4).
§ 226.5a(b)(1)(iii)	§ 226.5a(c)(2)(ii).
§ 226.5a(e)(3)	§ 226.5a(e)(2).
§ 226.5a(e)(4)	§ 226.5a(e)(3).
Comment 5a(a)(2)–2	Comment 5a(a)(2)–1.
Comment 5a(a)(2)–3	Comment 5a(a)(2)–2.
Comment 5a(a)(2)–4	§ 226.5a(a)(2)(ii).
Comment 5a(a)(2)–7	Comment 5a(a)(2)–4.
Comments 5a(a)(3)–1; –3	§ 226.5a(a)(5).
Comment 5a(a)(3)–2	§ 226.5a(a)(5); Comment 5a(a)(5)–1.
Comment 5a(a)(5)–1	Comment 5a(a)(4)–1.
Comment 5a(b)(1)–2	Comment 5a(b)(1)–1.
Comment 5a(b)(1)–3	§ 226.5a(d)(3).
Comment 5a(b)(1)–4	§ 226.5a(b)(1)(i); Comment 5a(b)(1)–2.
Comment 5a(b)(1)–5	§ 226.5a(b)(1)(ii).
Comment 5a(b)(1)–6	§ 226.5a(b)(1)(iii).
Comment 5a(b)(1)–7	§ 226.5a(b)(1)(iv); Comment 5a(b)(1)–4.
Comment 5a(c)–2	Comment 5(a)(c)–1.
Comment 5a(e)(3)–1	Comment 5a(e)(2)–1.
Comment 5a(e)(4)–1	Comment 5a(e)(3)–1.
Comment 5a(e)(4)–2	Comment 5a(e)(3)–2.
Comment 5a(e)(4)–3	Comment 5a(e)(3)–3.
§ 226.6(a)(1)	§ 226.6(a)(1)(i).
§ 226.6(a)(2)	§ 226.6(a)(1)(ii).
Footnote 11	§ 226.6(a)(1)(ii); § 226.6(b)(2)(i)(B).
Footnote 12	§ 226.6(a)(1)(ii); § 226.6(b)(2)(ii).
§ 226.6(a)(3)	§ 226.6(a)(1)(iii).
§ 226.6(a)(4)	§ 226.6(a)(1)(iv).
Footnote 13	Comments 6(a)(1)(iv)–1 and 6(b)(1)–3.
§ 226.6(b)	§ 226.6(a)(2).
§ 226.6(c)	§ 226.6(c)(1).
§ 226.6(d)	§ 226.6(c)(2).
§ 226.6(e)(1)	§ 226.6(a)(3)(i).
§ 226.6(e)(2)	§ 226.6(a)(3)(ii).
§ 226.6(e)(3)	§ 226.6(a)(3)(iii).

Current	Redesignation
§ 226.6(e)(4)	§ 226.6(a)(3)(iv).
§ 226.6(e)(5)	§ 226.6(a)(3)(v).
§ 226.6(e)(6)	§ 226.6(a)(3)(vi).
§ 226.6(e)(7)	§ 226.6(a)(3)(vii).
Comment 6(a)(1)–1	Comments 6(a)(1)(i)–1 and 6(b)(1)–1.
Comment 6(a)(1)–2	Comments 6(a)(1)(i)–2 and 6(b)(1)–2.
Comment 6(a)(2)–1	Comments 6(a)(1)(ii)–1 and 6(b)(2)(i)(B)–1.
Comment 6(a)(2)–2	Comments 6(a)(1)(ii)–2 and 6(b)(2)(ii)–1.
Comment 6(a)(2)–3	Comment 6(a)(1)(ii)–3.
Comment 6(a)(2)–4	Comment 6(a)(1)(ii)–4.
Comment 6(a)(2)–5	Comment 6(a)(1)(ii)–5.
Comment 6(a)(2)–6	Comments 6(a)(1)(ii)–6 and 6(b)(2)(ii)–2.
Comment 6(a)(2)–7	Comments 6(a)(1)(ii)–7 and 6(b)(2)(ii)–3.
Comment 6(a)(2)–8	Comments 6(a)(1)(ii)–8 and 6(b)(2)(ii)–4.
Comment 6(a)(2)–9	Comment 6(a)(1)(ii)–9.
Comment 6(a)(2)–10	Comments 6(a)(1)(ii)–10 and 6(b)(2)(ii)–5.
Comment 6(a)(2)–11	Comment 6(a)(1)(ii)–11.
Comment 6(a)(3)–1	Comment 6(a)(1)(iii)–1.
Comment 6(a)(3)–2	Comment 6(a)(1)(iii)–2.
Comment 6(a)(4)–1	Comment 6(a)(1)(iv)–1.
Comment 6(b)–1	Comment 6(a)(2)–1.
Comment 6(b)–2	Comment 6(a)(2)–2.
Comment 6(c)–1	Comment 6(c)(1)–1.
Comment 6(c)–2	Comment 6(c)(1)–2.
Comment 6(c)–3	Comment 6(c)(1)–3.
Comment 6(c)–4	Comment 6(c)(1)–4.
Comment 6(c)–5	Comment 6(c)(1)–5.
Comment 6(d)	Comment 6(c)(2).
Comment 6(e)–1	Comment 6(a)(3)–1.
Comment 6(e)–2	Comment 6(a)(3)–2.
Comment 6(e)–3	Comment 6(a)(3)–3.
Comment 6(e)–4	Comment 6(a)(3)–4.
§ 226.7(a)	§ 226.7(a)(1); § 226.7(b)(1).
§ 226.7(b)	§ 226.7(a)(2); § 226.7(b)(2).
§ 226.7(c)	§ 226.7(a)(3); § 226.7(b)(3).
§ 226.7(d)	§ 226.7(a)(4); § 226.7(b)(4).
Footnote 15	§ 226.7(a)(4); § 226.7(b)(4).
§ 226.7(e)	§ 226.7(a)(5); § 226.7(b)(5).
§ 226.7(f)	§ 226.7(a)(6)(i).
§ 226.7(g)	§ 226.7(a)(7); § 226.7(b)(7).
§ 226.7(h)	§ 226.7(a)(6)(ii).
§ 226.7(i)	§ 226.7(a)(10); § 226.7(b)(10).
§ 226.7(j)	§ 226.7(a)(8); § 226.7(b)(8).
§ 226.7(k)	§ 226.7(a)(9); § 226.7(b)(9).
Comment 7–3	Comment 7(b)–1.
Comment 7(a)–1	Comments 7(a)(1)–1 and 7(b)(1)–1.
Comment 7(a)–2	Comments 7(a)(1)–2 and 7(b)(1)–2.
Comment 7(a)–3	Comments 7(a)(1)–3 and 7(b)(1)–3.
Comment 7(b)–1	Comments 7(a)(2)–1 and 7(b)(2)–1.
Comment 7(b)–2	Comments 7(a)(2)–2 and 7(b)(2)–2.
Comment 7(c)–1	Comments 7(a)(3)–1 and 7(b)(3)–1.
Comment 7(c)–2	Comment 7(a)(3)–2.
Comment 7(c)–3	Comments 7(a)(3)–3 and 7(b)(3)–2.
Comment 7(c)–4	Comments 7(a)(3)–4 and 7(b)(3)–3.
Comment 7(d)–1	Comments 7(a)(4)–1 and 7(b)(4)–1.
Comment 7(d)–2	Comments 7(a)(4)–2 and 7(b)(4)–2.
Comment 7(d)–3	Comments 7(a)(4)–3 and 7(b)(4)–3.
Comment 7(d)–4	Comment 7(a)(4)–4.
Comment 7(d)–5	Comments 7(a)(4)–5 and 7(b)(4)–4.
Comment 7(d)–6	Comments 7(a)(4)–6 and 7(b)(4)–5.
Comment 7(d)–7	Comment 7(b)(4)–6.
Comment 7(e)–1	Comment 7(a)(5)–1.
Comment 7(e)–2	Comments 7(a)(5)–2 and 7(b)(5)–1.
Comment 7(e)–3	Comments 7(a)(5)–3 and 7(b)(5)–2.
Comment 7(e)–4	Comments 7(a)(5)–4 and 7(b)(5)–3.
Comment 7(e)–5	Comments 7(a)(5)–5 and 7(b)(5)–4.
Comment 7(e)–6	Comment 7(a)(5)–6.
Comment 7(e)–7	Comments 7(a)(5)–7 and 7(b)(5)–5.
Comment 7(e)–8	Comments 7(a)(5)–8 and 7(b)(5)–6.
Comment 7(e)–9	Comments 7(a)(5)–9 and 7(b)(5)–7.
Comment 7(e)–10	Comment 7(b)(5)–8.
Comments 7(f)–1	Comment 7(a)(6)(i)–1.
Comment 7(f)–2	Comment 7(a)(6)(i)–2.
Comment 7(f)–3	Comment 7(a)(6)(i)–3.

Current	Redesignation
Comment 7(f)–4	Comment 7(a)(6)(i)–4.
Comment 7(f)–5	Comment 7(a)(6)(i)–5.
Comment 7(f)–6	Comment 7(a)(6)(i)–6.
Comment 7(f)–7	Comment 7(a)(6)(i)–7.
Comment 7(f)–8	Comment 7(a)(6)(i)–8.
Comment 7(g)–1	Comments 7(a)(7)–1 and 7(b)(7)–1.
Comment 7(g)–2	Comments 7(a)(7)–2 and 7(b)(7)–2.
Comment 7(h)–1	Comment 7(a)(6)(ii)–1.
Comment 7(h)–2	Comment 7(a)(6)(ii)–2.
Comment 7(h)–3	Comment 7(a)(6)(ii)–3.
Comment 7(h)–4	Comment 7(a)(6)(ii)–4.
Comment 7(i)–1	Comments 7(a)(10)–1 and 7(b)(10)–1.
Comment 7(i)–2	Comments 7(a)(10)–2 and 7(b)(10)–2.
Comment 7(i)–3	Comments 7(a)(10)–3 and 7(b)(10)–3.
Comment 7(j)–1	Comments 7(a)(8)–1 and 7(b)(8)–1.
Comment 7(j)–2	Comment 7(b)(8)–2.
Comment 7(k)–1	Comments 7(a)(9)–1 and 7(b)(9)–1.
Comment 7(k)–2	Comments 7(a)(9)–2 and 7(b)(9)–2.
Comment 8–2	Comment 8(a)–1.
Comment 8–3	Comment 8(b)–1.
Comment 8–5	Comment 8(a)–5.
Comment 8(a)–1	Comment 8(a)–4.i.
Comment 8(a)–2	Comment 8(a)–4.ii.
Comment 8(a)–4	Comment 8(a)–2.
Comment 8(a)(2)–1	Comment 8(a)–6.
Comment 8(a)(2)–2	Comment 8(a)–6.
Comment 8(a)(2)–5	Comment 8(a)–3.
Comment 8(a)(3)–1	Comment 8(a)–7.
Comment 8(a)(3)–2	Comment 8(a)–8.
Comment 8(a)(3)–3	Comment 8(a)–8.
Comment 8(a)(3)–4	Comment 8(a)–3.
Comment 8(b)–1	Comment 8(b)–3.
Comment 8(b)–3	Comment 8(b)–2.
Footnote 16	§ 226.8(c)(1).
Footnote 17	§ 226.8(c)(2).
Footnote 19	§ 226.8(a)(1)(ii).
§ 226.9(c)	§ 226.9(c)(1) and 226.9(c)(2).
§ 226.9(c)(1)	§ 226.9(c)(1)(i) and § 226.9(c)(2)(i).
§ 226.9(c)(2)	§ 226.9(c)(1)(ii) and § 226.9(c)(2)(iv).
§ 226.9(c)(3)	§ 226.9(c)(1)(iii).
Comment 9(c)–1	Comments 9(c)(1)–1 and 9(c)(2)–1.
Comment 9(c)–2	Comment 9(c)(1)–2 and 9(c)(2)–2.
Comment 9(c)–3	Comment 9(c)(1)–3 and 9(c)(2)–3.
Comment 9(c)(1)–1	Comment 9(c)(1)(i)–1 and 9(c)(2)(i)–1.
Comment 9(c)(1)–2	Comment 9(c)(1)(i)–2 and 9(c)(2)(i)–2.
Comment 9(c)(1)–3	Comment 9(c)(1)(i)–3 and 9(c)(2)(i)–3.
Comment 9(c)(1)–4	Comment 9(c)(1)(i)–4 and 9(c)(2)(i)–4.
Comment 9(c)(1)–5	Comment 9(c)(1)(i)–5 and 9(c)(2)(i)–5.
Comment 9(c)(1)–6	Comment 9(c)(1)(i)–6.
Comment 9(c)(2)–1	Comment 9(c)(1)(ii)–1 and 9(c)(2)(iv)–1.
Comment 9(c)(2)–2	Comment 9(c)(1)(ii)–2 and 9(c)(2)(iv)–2.
Comment 9(c)(3)–1	Comment 9(c)(1)(iii)–1.
Comment 9(c)(3)–2	Comment 9(c)(1)(iii)–2.
§ 226.11	§ 226.11(a).
§ 226.11(a)	§ 226.11 (a)(1).
§ 226.11(b)	§ 226.11(a)(2).
§ 226.11(c)	§ 226.11(a)(3).
Comment 11–1	Comment 11(a)–1.
Comment 11–2	Comment 11(a)–2.
Comment 11(b)–1	Comment 11(a)(2)–1.
Comment 11(c)–1	Comment 11(a)(3)–1.
Comment 11(c)–2	Comment 11(a)(3)–2.
§ 226.12(b)(1)	§ 226.12(b)(1)(ii).
§ 226.12(c)(3)	§ 226.12(c)(3)(i).
§ 226.12(c)(3)(i)	§ 226.12(c)(3)(i)(A).
§ 226.12(c)(3)(ii)	§ 226.12(c)(3)(i)(B).
Footnote 21	Comment 12–2.
Footnote 22	§ 226.12(b)(1)(i).
Footnote 23	Comment 12(b)(2)(ii)–2.
Footnote 24	Comment 12(c)–3.
Footnote 25	Comment 12(c)–4.
Footnote 26	§ 226.12(c)(3)(ii).
Comment 12(c)(3)(i)–1	Comment 12(c)(3)(i)(A)–1.
Comment 12(c)(3)(ii)–1	Comment 12(c)(3)(i)(B)–1.

Current	Redesignation
Comment 12(c)(3)(ii)–2	Comment 12(c)(3)(ii)–1.
Footnote 27	§ 226.13(d)(3).
Footnote 28	Comment 13(b)–1.
Footnote 29	Comment 13(b)–2.
Footnote 30	§ 226.13(d)(4).
Comment 13–2	Comment 13–1.
Comment 13(a)–1	Comment 13(a)(1)–1.
Footnote 31a	§ 226.14(a).
Footnote 32	§ 226.14(c)(2).
Footnote 33	§ 226.14(c)(2).
§ 226.14(d)(1)	§ 226.14(c)(5)(i).
§ 226.14(d)(2)	§ 226.14(c)(5)(ii).
Comment 14(c)–2	Comment 14(c)(1)–1.
Comment 14(c)–3	Comment 14(c)(2)–1.
Comment 14(c)–4	Comment 14(c)(2)–2.
Comment 14(c)–5	Comment 14(c)(3)–1.
Comment 14(c)–6	Comment 14(c)(3)–2.
Comment 14(c)–7	Comment 14(c)–2.
Comment 14(c)–8	Comment 14(c)–3.
Comment 14(c)–9	Comment 14(c)–4.
Comment 14(c)–10	Comment 14(c)–5.
Comment 14(d)–1	Comment 14(c)–6.
Comment 14(d)–2	Comment 14(c)–6.
§ 226.16(b)(1)	§ 226.16(b)(1)(i).
§ 226.16(b)(2)	§ 226.16(b)(1)(ii).
§ 226.16(b)(3)	§ 226.16(b)(1)(iii).
Comment 16–2	Comment 16–3.
Comment 16(b)–1	§ 226.16(b)(1).
Comment 16(b)–2	Comment 16(b)–1.
Comment 16(b)–3	Comment 16(b)–2.
Comment 16(b)–4	Comment 16(b)–3.
Comment 16(b)–6	§ 226.16(e).
Comment 16(b)–7	Comment 16(b)–1.
Comment 16(b)–8	§ 226.16(b)(1).
Comment 16(b)–9	Comment 16(b)–4.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows while language that would be deleted is set off with brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.1 is amended by republishing paragraphs (a), (b), (c), and (e), revising paragraph (d), and removing and reserving footnote 1 to read as follows:

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0199.

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) *Coverage.*

(1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; [1] (iii) the credit is subject to the finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written

[1] ►[Reserved]◄ [The meaning of ''regularly'' is explained in the definition of ''creditor'' in § 226.2(a).]

agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) the authority, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempt from coverage; and (iv) the method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that ►account-opening◄ [initial] disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of § 226.5a and § 226.5b, respectively. ►It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.◄

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, ►disclosures in languages other than English◄ [Spanish-language disclosure in Puerto Rico], record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for ►certain◄ mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with ►certain◄ mortgage transactions.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

3. Section 226.2 is amended by revising paragraph (a), republishing paragraph (b) and removing and reserving footnote 3 to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved] [2]

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Board* means the Board of Governors of the Federal Reserve System.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under § 226.15 and § 226.23, and for purposes of § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than ''open end credit'' as defined in this section.

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of the rescission under § 226.15 and § 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15) *Credit card* means any card, plate, [coupon book,] or other single credit device that may be used from time to time to obtain credit. *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

[2] [Reserved].

(i) A person (A) who regularly extends consumer credit [3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (Discounts), 226.9(d) (finance charge imposed at time of transaction), and 226.12(e) (prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in ►§§ 226.6(a)(1) and (b)(1) and §§ 226.7(a)(4) through (7) and (b)(4) through (7)◄ [§ 226.6(a) and § 226.7(d) through (g)] and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

►(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by the dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.◄

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under § 226.6 and § 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under § 226.15 and § 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the work *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contact.

(4) Footnotes have the same legal effect as the text of the regulation.

(5) Where the word ''amount'' is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

4. Section 226.3 is amended by republishing paragraphs (a), (b), (c), (d), (e), and (f), adding a new paragraph (g), and removing and reserving footnote 4 to read as follows:

§ 226.3 Exempt transactions.

This regulation does not apply to the following: [4]

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire,

[3] ►[Reserved]◄ [A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of section 226.32) more than 25 times (or more than 5 times for transactions secured by the dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of section 226.32 or one or more such credit extensions through a mortgage broker.]

[4] ►[Reserved]◄ [The provisions in Section 226.12(a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.]

other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

►(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under Section 401(a) of the Internal Revenue Code or a tax-sheltered annuity under Section 403(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).◄

5. Section 226.4 is amended by republishing paragraphs (a), (c), (e), and (f), revising paragraphs (b) and (d), and removing and reserving footnotes 5 and 6 to read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) *Debt cancellation ►and debt suspension◄ fees.* Charges or premiums paid for debt cancellation ►or debt suspension◄ coverage written in connection with a credit transaction, whether or not the [debt cancellation] coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation ►and debt suspension◄ coverage.*

(1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed ►in writing◄. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph►, except as provided in paragraph (d)(4) of this section◄. Any consumer in the transaction may sign or initial the request.

(2) ►*Property insurance premiums.*◄ Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, ►including single interest insurance if the insurer waives all right of subrogation against the consumer,◄ [5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. ►(A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)◄

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation ►or debt suspension◄ fees.* [(i)]Charges or premiums paid for debt cancellation coverage ►for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident◄ [of the type specified in paragraph (d)(3)(ii) of this section] may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

►(i)◄ [(A)] The debt cancellation ►or debt suspension◄ agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

►(ii)◄ [(B)] The fee or premium for the initial term of coverage is disclosed ►in writing◄. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

►(iii) The following are disclosed, as applicable, for debt suspension coverage: that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.◄

►(iv)◄ [(C)] The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph ►, except as provided in paragraph (d)(4) of this section◄. Any consumer in the transaction may sign or initial the request.

[(ii) Paragraph (d)(3)(i) of this section applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor s liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income or in case of accident.]

►(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain reasonable procedures to provide the disclosures to the consumer orally and maintain evidence that the consumer, after being provided the disclosures, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.◄

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

6. Section 226.5 is amended by revising paragraphs (a) and (b), republishing paragraphs (c), (d), and (e), and removing and reserving footnotes 7 through 10 to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.*

(1) ►*General.*◄

►(i)◄ The creditor shall make the disclosures required by this subpart clearly and conspicuously►.◄

►(ii) The creditor shall make the disclosures required by this subpart◄ in writing,[7] in a form that the consumer may keep[.] [8] ►, except that:

(A) The following disclosures need not be written: disclosures under § 226.6(b)(1) of charges that are imposed as part of the plan and may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the timing requirements of paragraph (b)(1)(ii) of this section and related disclosures under § 226.9(c)(2)(ii)(B) of charges; and disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form: disclosures for credit and charge card applications and solicitations under § 226.5a; home equity disclosures under § 226.5b(d); the

[5] ►[Reserved]◄ [This includes single interest insurance if the insurer waives all right of subrogation against the consumer.]

[6] ►[Reserved]◄ [A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.]

[7] ►[Reserved]◄ [The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.]

[8] ►[Reserved]◄ [The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing-rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.]

alternative summary billing-rights statement under § 226.9(a)(2); the credit and charge card renewal disclosures required under § 226.9(e); and the payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄

►(2) *Terminology.*

(i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) The terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for credit and charge card applications and solicitations under § 226.5a; for account-opening disclosures in a tabular format under § 226.6(b)(4); for periodic statements disclosures under § 226.7(b)(4) and § 226.7(b)(7); for disclosures in a tabular format accompanying checks that access a credit card account under § 226.9(b)(3); for information in change-in-terms notices in a tabular format under § 226.9(c)(2)(iii)(B); for information when rates are increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii); for credit and charge card renewal disclosures under § 226.9(e); and for advertisements under § 226.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *grace period* and *penalty APR* shall be used, as applicable. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.◄

►(3) *Specific formats.*

(i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home equity plans must precede other disclosures and must be given in accordance with the requirements of § 226.5b(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(b)(4).

(iv) Certain disclosures provided on periodic statement must be provided in a tabular format in accordance with the requirements of § 226.7(b)(7).

(v) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and § 226.7(b)(13).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(2)(iii)(B).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a rate must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).◄

[(2) The terms ''finance charge'' and ''annual percentage rate,'' when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.

(3) Certain disclosures required under § 226.5a for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of that section.

(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.]

(b) *Time of disclosures.*

(1) [*Initial*] ►*Account-opening*◄ *disclosures.*

► (i) *General rule.*◄ The creditor shall furnish ►account-opening disclosures◄ [the initial disclosure statement] required by § 226.6 before the first transaction is made under the plan.

►(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 226.6(b)(4) may be provided at any relevant time before the consumer agrees to pay or becomes obligated to pay for the charge. This provision does not apply to charges imposed as part of a home equity plan subject to the requirements of § 226.5b.

(iii) *Telephone purchases.* Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant,

(B) The merchant permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after receiving the written disclosures required by § 226.6, and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees.* A creditor may collect, or obtain the consumer's agreement to pay, a membership fee before providing account-opening disclosures if the consumer may reject the plan after receiving the disclosures. If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay the fee.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures.◄

(2) *Periodic statements.*

(i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency

---

[9] ►[Reserved]◄ [The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations, under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)]

collection proceedings have been instituted, or if furnishing the statement would violate federal law.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under ►§ 226.7(a)(8) or § 226.7(b)(8), as applicable,◄ [§ 226.7(j) in order] for the consumer to avoid an additional finance or other charge.[10] A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

►(iii) The timing requirement under this paragraph (b)(2) does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.◄

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by § 226.6 and § 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

[10] ►[Reserved]◄ [This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.]

7. Section 226.5a is amended by revising paragraphs (a), (b), (c), (d), (e), (f), and republishing paragraph (g) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. ►A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.◄

(2) *Form of disclosures* ►; *tabular format.*◄

(i) The disclosures in paragraphs (b)(1) through ►(5) and (b)(7) through (17)◄ [(7)] of this section ►made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally◄ shall be [provided in a prominent location on or with an application or a solicitation, or other applicable document , and] in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in ►G–10 in◄ appendix G.

►(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraph (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any APR required to be disclosed pursuant to paragraph (b)(1) of this section, any discounted initial rate permitted to be disclosed pursuant to paragraph (b)(1)(ii) of this section, and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (4), (8) through (12) or (14) of this section must be disclosed in bold text, except for any maximum limits on fee amounts disclosed in the table. Other APRs or fee amounts disclosed in the table shall not be in bold text.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.◄

[(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(iii) The disclosure required under paragraph (b)(5) of this section shall contain the term *grace period.*

(iv) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under §§ 226.6 and 226.7.

(3) *Exceptions.* This section does not apply to home equity plans accessible by a credit or charge card that are of the type subject to the requirements of § 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.]

►(3)◄ [(4)] *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

►(4)◄ [(5)] *Certain fees that vary by state.* If the amount of any fee referred to in paragraphs (b)(8) through ► (12) ◄ [(11)] of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

►(5) *Exceptions.* This section does not apply to:

(i) Home equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.◄

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), [or (e)] ►(e)(1) or (f)◄ of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through ►(12), and (16)◄ [(11)] of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least [18-point] ►16-point◄ type, except for the following: ►oral disclosures of the annual percentage rate for purchases,◄ a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that ►may◄ [will] apply upon the occurrence of one or more specific events.

(i) ►*Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate,◄ [If the account has a variable rate,] the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. ►In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table.◄

►(ii) *Discounted initial rate.* If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, pursuant to paragraph (b)(1) of this section the card issuer must disclose the rate that would otherwise apply to the account. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c), (d), or (e) of this section, as applicable. The issuer may disclose in the table the discounted initial rate along with the rate that would otherwise apply to the account if the card issuer also discloses the time period during which the discounted initial rate will remain in effect, and uses the term ''introductory'' or ''intro'' in immediate proximity to the listing of the discounted initial rate.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, pursuant to paragraph (b)(1) of this section the card issuer must disclose the premium initial rate. The issuer may disclose in the table the rate that will apply after the premium initial rate expires if the issuer also discloses the time period during which the premium initial rate will remain in effect. The premium initial rate must be in at least 16-point type unless the issuer also discloses in the table the rate that will apply after the premium initial rate expires. In that case, the rate that will apply after the premium initial rate expires must be in at least 16-point type.

(iv) *Penalty rates.* If a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, pursuant to paragraph (b)(1) of this section the card issuer must disclose the increased rate that would apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. Issuers must briefly disclose the circumstances under which any discounted initial rate may be revoked, and the rate that will apply after the revocation. The issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

(v) *Rates depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness.

(vi) *Transaction with both rate and fee.* If both a rate and a fee would apply to a balance transfer or cash advance transaction, the card issuer must disclose that a fee also applies when disclosing the rate, and provide a cross-reference to the fee.◄

[(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.

(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's e-mail address. If disclosures are made available at another location such as the card issuer s Internet Web site, the annual percentage rate must be one in effect within the last 30 days.**]**

(2) *Fees for issuance or availability.* ►(i)◄ Any annual or other periodic fee [expressed as an annualized amount, or any other fee] that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity[.] ►; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.◄

(3) *Minimum finance charge.* Any minimum or fixed finance charge that could be imposed during a billing cycle ►and a brief description of the charge◄.

(4) *Transaction charges.* ►(i) Except as provided in paragraph (b)(4)(ii) of this section, any◄ [Any] transaction charge imposed ►by the card issuer◄ for the use of the card for purchases.

►(ii) A card issuer shall not disclose in the table required by paragraph (a)(2)(i) of this section a fee imposed by the issuer for transactions in a foreign currency or that take place in a foreign country.◄

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge ►due to a periodic interest rate and any conditions on the availability of the grace period.◄ If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of

days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. ►A card issuer must provide this information directly below the table, if a tabular format is required.◄ [The explanation of the method may appear outside the table if the table contains a reference to the explanation.] In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

►(12) *Returned payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Cross-reference to penalty rate.* If a card issuer may impose a penalty rate as described in paragraph (b)(1)(iv) of this section for any of the circumstances for which a fee must be disclosed in paragraph (b)(9), (b)(10) or (b)(12), the card issuer must disclose the fact that the penalty rate also may apply, and a cross-reference to the penalty rate.

(14) *Required insurance, debt cancellation or debt suspension coverage.*

(i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross-reference to any additional information provided about the insurance or coverage accompanying the application or solicitation.

(15) *Payment allocation.* If a card issuer offers a discounted initial rate on a balance transfer or cash advance that is lower than the rate on purchases, the issuer offers a grace period on purchases, and the issuer may allocate a payment to the lower rate balance first, then the issuer must state the following: the initial discounted rate applies to balances transfers or cash advances (as applicable) and not to purchases; payments will be allocated to the balance transfer or cash advance balance (as applicable) before being allocated to any purchase balance during the time the discounted initial rate is in effect; and the consumer will be charged interest on all purchases until the entire account balance is paid off, including the transferred balance or cash advance balance (as applicable). This paragraph (b)(15) applies only if the initial discounted rate applies to balance transfers or cash advances that consumers can request as part of accepting the offer.

(16) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 25 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees.

(17) *Reference to Web site for additional information.* A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.◄

(c) *Direct-mail and electronic applications and solicitations.* ►(1) *General.*◄ The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers [or provided by electronic communication] ►or provided to consumers in electronic form◄.

►(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Internet Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.◄

(d) *Telephone applications and solicitations*—(1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(2) of this section or does not impose such a fee unless the consumer uses the card, and the card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(i) The applicable information in paragraph (b) of this section; and

(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

►(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).◄

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1)[,] ►or (e)◄ (2) [or (3)] of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

[(2) *Inclusion of certain initial disclosures.* The card issuer may disclose on or with the application or solicitation the following:

(i) The disclosures required under § 226.6 (a) through (c); and

(ii) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.]

[(3)] ►(2)◄ *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

[(4)] ►(3)◄ *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

►(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.◄

►(f) *In-person applications and solicitations—General.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.◄

[(f) *Special charge card rule—card issuer and person extending credit not the same person.* If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.]

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late-payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2)(i) *Two-cycle average daily balance (including new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(ii) *Two-cycle average daily balance (excluding new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

8. Section 226.6 is amended by revising the heading, revising the introductory paragraph, revising paragraphs (a), (b), and (c), removing paragraphs (d) and (e), and removing and reserving footnotes 11 through 13 to read as follows:

§ 226.6 ►Account-opening disclosures◄ [Initial disclosure statement].

►Creditors shall disclose the items in this section, to the extent applicable.◄ [The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:]

(a) ►*Rules affecting home equity plans.* The requirements of paragraph (a) of this section apply only to home equity plans subject to the requirements of § 226.5b.

(1) ◄*Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows.

►(i)◄ [(1)] A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

►(ii)◄ [(2)] A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] ►If a creditor offers a variable-rate plan, the creditor shall also disclose: The circumstances under which the rate(s) may increase; any limitations on the increase; and the

[11] ►[Reserved]◄ [A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.]

[12] ►[Reserved]◄ [If a creditor is offering a variable-rate plan, the creditor shall also disclose, (1) the circumstances under which the rate(s) may increase; (2) any limitations on the increase; and (3) the effect(s) of an increase.]

effect(s) of an increase.◄ When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. ►A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.◄

►(iii)◄ [(3)] An explanation of the method used to determine the balance on which the finance charge may be computed.

► (iv) ◄[(4)] An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

►(2)◄ [(b)] *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

►(3) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and 226.5b(d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.◄

►(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply to plans other than home equity plans subject to the requirements of § 226.5b.◄

►(1) *Charges imposed as part of open-end (not home-secured) plans.* The circumstances under which a charge may be imposed as part of the plan, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(i) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(ii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than a creditor for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.◄

►(2) *Rules relating to rates for open-end (not home-secured) plans.* If a finance charge disclosed under paragraph (b)(1) of this section is computed by using a periodic rate:

(i) For each periodic rate that may be used to calculate interest:

(A) The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) An explanation of the method used to determine the balance to which the rate is applied.

(ii) For interest rate changes that are specifically set forth in the account agreement and are tied to increases in an index or formula (variable-rate accounts):

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date within the last 30 days before the disclosures are provided.

(iii) For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(2)(i) of this section.

(B) How long the initial rate will remain in effect or the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) Whether the new rate will apply to balances outstanding at the time of the change.◄

►(3) *Voluntary credit insurance, debt cancellation or debt suspension.* See §§ 226.4(d)(1)(i) and (ii) and (d)(3)(i) through (iii) for disclosures required if optional credit insurance or debt cancellation or debt suspension coverage identified in § 226.4(b)(7) or § 226.4(b)(10) is offered before the consumer opens the plan.◄

►(4) *Tabular format requirements for open-end (not home-secured) plans.*

(i) *Tabular format.* The disclosures in paragraph (b)(4)(ii) through (b)(4)(viii) of this section shall be in the form of a

[13] ►[Reserved]◄ [If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.]

table with the headings, content, and format substantially similar to any of the applicable tables found in G–17 in appendix G.

(A) The table described in paragraph (b)(4)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(B) Disclosures required by paragraphs (b)(4)(ix) and b(4)(x) of this section must be placed directly below the table.

(C) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(4)(ii) of this section and any fee amounts required to be disclosed pursuant to paragraph (b)(4)(iii) must be disclosed in bold text, except for any maximum limits on fee amounts disclosed in the table. Other annual percentage rates or fee amounts disclosed in the table shall not be in bold text.

(ii) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(4)(ii) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table.

(B) *Temporary initial rates.* If an initial rate is temporary, the initial rate, the circumstances under which that rate expires, and the rate that will apply after the temporary rate will expire shall be disclosed.

(C) *Increased penalty rates.* If a rate may increase upon the occurrence of one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(4)(ii) of this section the increased penalty rate that may apply, a description of the types of balances to which the increased rate will apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If a temporary initial rate is lower than the rate that will apply after the temporary rate expires, creditors must briefly disclose the circumstances under which any initial discounted rates may be revoked, and the rate that will apply after the initial discounted rate is revoked. The creditor need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

(D) *Rate and fee both apply to the same transaction.* If a rate and fee both apply to a balance transfer or cash advance transaction, the creditor must disclose that a fee also applies when disclosing the rate, and provide a cross reference to the fee.

(iii) *Fees.*

(A) *Fees for issuance or availability of credit.* Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; and any non-periodic fee that relates to opening the plan. A creditor must disclose the amount of the periodic fee, how frequently it will be imposed, and the annualized amount of the fee. A creditor disclosing a non-periodic fee must disclose that the fee is a one-time fee.

(B) *Transaction charges.* Any transaction charge imposed on purchases, for cash advances or to transfer balances, including fees imposed by the creditor for using automated teller machines or for transactions in a foreign currency or that take place in a foreign country.

(C) *Penalty fees.* Any fee imposed for a late payment, exceeding a credit limit, or for a returned payment. If a creditor may impose a penalty rate as described in paragraph (b)(4)(ii) of this section for any of the circumstances where a fee must be disclosed in this paragraph, the creditor must also disclose that the penalty rate also may apply and a cross reference to the fee.

(D) *Minimum finance charge.* Any minimum or fixed finance charge that could be imposed during a billing cycle and a brief description of the charge.

(iv) *Grace period.* An explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring a finance charge.

(v) *Required insurance, debt cancellation or debt suspension coverage.* A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and a cross-reference to any additional information provided about the insurance or coverage, as applicable.

(vi) *Payment allocation.* If a creditor offers an initial discounted rate on a balance transfer or cash advance that is lower than the rate on purchases where the creditor offers a grace period on purchases, and the creditor allocates payments to the lower rate balance first, the creditor must provide a statement that payments will be allocated to the lower rate balance first during the time the lower rate is in effect, and during that time the consumer will incur interest on the higher rate balance until the lower rate balance is paid off completely.

(vii) *Available credit.* If a creditor requires fees for the issuance or availability of an open-end plan described in paragraph (b)(4)(iii)(A) of this section, or a security deposit, and the total amount of those required fees or security deposit that will be imposed when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with the card, a creditor must disclose the amount of the available credit that a consumer will have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 25 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that is required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees.

(viii) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

(ix) *Balance computation method.* The name of the balance computation method listed in § 226.5a(g) that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method required by paragraph (b)(2)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within any grace period.

(x) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.◄

► (c) *Rules of general applicability.*

(1) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(2) *Statement of billing rights.* For plans other than home equity plans subject to the requirements of § 226.5b, a statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3(A) in appendix G. Creditors offering home equity plans subject to the requirements of § 226.5b may use Model Form G–3 or G–3A, at their option.◄

[(c) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.]

[(d) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in appendix G.]

[(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(2) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and 226.5b (d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.]

9. Section 226.7 is amended by republishing the introductory text, revising paragraphs (a) and (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k), and removing and reserving footnotes 14 and 15 to read as follows:

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

►(a) *Rules affecting home equity plans.* The requirements of paragraph (a) of this section apply only to home equity plans subject to the requirements of § 226.5b. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses to comply with paragraph (b)(6) of this section must also comply with paragraph (b)(7) of this section.◄

►(1)◄ [(a)] *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

►(2)◄ [(b)] *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

►(3)◄ [(c)] *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

►(4)◄ [(d)] *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] ►If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed.◄ If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. ►For variable-rate plans, the fact that the periodic rate(s) may vary.◄

►(5)◄ [(e)] *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

►(6)◄ [(f)] *Amount of finance charge* ► *and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges.*◄ The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

►(ii) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.◄

►(7)◄ [(g)] *Annual percentage rate.*

ALTERNATIVE 1—PARAGRAPH (a)(7).

(i) When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14 using the term *annual percentage rate.*

(ii) Creditors may comply with paragraph (a)(7)(i) of this section or with paragraph (b)(7) of this section, at their option. If a creditor chooses to comply with paragraph (b)(7) of this section with respect to its home equity plans, the creditor must also comply with paragraph (b)(6) of this section.

ALTERNATIVE 2—PARAGRAPH (a)(7).

At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14 using the term *annual percentage rate.*

►(8)◄ [(j)] ►*Grace*◄ *[Free-ride] period.* The date by which or the time period within the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without

[14] ►[Reserved]◄ [See footnotes 11 and 13.]

[15] ►[Reserved◄.] [If a variable-rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary.]

disclosure, impose no finance charge if payment is received after the time period s expiration.

►(9)◄ [(k)] *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

►(10)◄ [(i)] *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

►(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply only to plans other than home equity plans subject to the requirements of § 226.5b.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8, grouped by type of transaction in a form substantially similar to that shown in Sample G–18(A) in appendix G.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge. Credits must be grouped together, and grouped with transactions identified under paragraph (b)(2) of this section, in a form substantially similar to that shown in Sample G–18(A) in appendix G.

(4) *Periodic rates.* (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term, *Annual Percentage Rate,* along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a specific and limited time need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate.* When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting finance charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed.* (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(b)(1), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G.

(ii) *Interest.* Finance charges attributable to periodic interest rates, using the term *Interest Charge*, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction, and a total interest charge, using the term *Total Interest Charge*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G.

(iii) *Fees.* Charges imposed as part of the plan other than interest must be grouped together under the heading *Fees*, identified consistent with the feature or type, and itemized. A total of charges, using the term *Fees*, must be disclosed for the statement period and calendar year to date. Fees identified in § 226.14(e) that relate to a specific transaction must be labeled using the term *Transaction fee*, and fees identified in § 226.14(e) that do not relate to a specific transaction must be labeled using the term *Fixed fee*, using a format substantially similar to Sample G–18(A) in appendix G.

ALTERNATIVE 1 ONLY—PARAGRAPH (b)(6)(iv).

(iv) In addition to the disclosures of interest and fees required under paragraphs (b)(6)(ii) and (b)(6)(iii) of this section, the creditor must also disclose, unless paragraph (b)(7)(ii) of this section applies, charges identified under this paragraph for the statement period, grouped together in a tabular format with the Fee-Inclusive APR information identified under paragraph (b)(7)(i) of this section, in a format substantially similar to Sample G–18(A) in appendix G.

(A) Finance charges attributable to interest, using the term *interest charges*, must be totaled by type of transaction and identified as relating to balances for that type of transaction.

(B) Charges imposed as part of the plan other than interest that are identified in § 226.14(e), using the term *Transaction and Fixed Fees*, must be grouped together. For multifeatured plans, charges that relate to a specific purchase transaction and charges that do not relate to a specific transaction must be totaled and identified as relating to purchase balances; charges that relate to a specific type of transaction other than purchases must be totaled and identified as relating to balances for that type of transaction. For single-featured plans, charges described in paragraph (b)(7)(iv) of this section must be grouped together and totaled.

ALTERNATIVE 1—PARAGRAPH (b)(7).

(7) *Effective annual percentage rate.* (i) Except as provided in paragraph (b)(7)(ii) of this section, when a finance charge identified in § 226.14(e) is imposed during the billing cycle, the effective annual percentage rate(s) determined for each type of transaction under § 226.14, using the term *Fee-Inclusive APR* and disclosed for each type of transaction; a description of the Fee-Inclusive APR; and a format substantially similar to Sample G–18(B) in appendix G.

(ii) When a finance charge identified in § 226.14(e) is imposed during the billing cycle and the finance charge is determined solely by applying one or more periodic rates used to calculate interest, by multiplying each periodic rate by the number of periods in a year, disclosed for each type of transaction.

ALTERNATIVE 2—PARAGRAPH (b)(7).

(7) [Reserved.]

(8) *Grace period.* The date by which or the time period within the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance

with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs.* (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section:

(A) The due date for a payment, if a late payment fee or penalty rate may be imposed.

(B) A cut-off time, if the creditor imposes a cut-off time before 5 p.m. for payment to be received. If the cut-off time differs depending on the method of payment, the creditor must state the earliest time if before 5 p.m. without specifying the payment method to which it applies.

(C) The amount of the fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed as a result of a late payment. If a range of fees may be assessed, the creditor must state the highest fee. If the rate may be increased for more than one feature or balance, the creditor must state the highest rate that could apply.

(ii) *Exemptions.* The requirements of paragraph (b)(11) of this section do not apply to periodic statements provided for charge cards accounts.

(12) *Minimum payment.* (i) *General disclosure requirements.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(iii) of this section, a card issuer shall disclose on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section:

(A) *Minimum payment not exceeding 4%.* Except as provided in paragraph (b)(12)(i)(C) or (D) of this section, if the required minimum periodic payment does not exceed 4% of the balance upon which finance charges accrue, the following statement with a bolded heading: ''**Notice About Minimum Payments:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number]'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*1*) of this section to provide generic repayment estimates discussed in appendix M1. Alternatively, for a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) may provide the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(B) *Minimum payment exceeding 4%.* (*1*) Except as provided in paragraphs (b)(12)(i)(B)(*2*), (b)(12)(i)(C) or (b)(12)(i)(D) of this section, if the required minimum periodic payment exceeds 4% of the balance upon which finance charges accrue, the following statement with a bolded heading: ''**Notice About Minimum Payments:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number]'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*1*) of this section to provide generic repayment estimates discussed in appendix M1. Alternatively, for a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) may provide the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(*2*) At a card issuer's option, an issuer subject to this paragraph is not required to comply with this paragraph if the issuer complies with paragraph (b)(12)(i)(A) of this section.

(C) *FTC-regulated credit card issuers.* Except as provided in paragraph (b)(12)(i)(D) of this section, if the Federal Trade Commission has authority under the Truth in Lending Act to enforce the act and this regulation as to a card issuer, the following statement with a bolded heading: ''**Notice About Minimum Payments:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call the Federal Trade Commission at this toll-free telephone number:________.'' The card issuer must disclose the toll-free telephone number established by or on behalf of the Federal Trade Commission pursuant to paragraph (b)(12)(iv)(B) of this section.

(D) *Alternative rate.* Card issuers that provide the statements under paragraphs (b)(12)(i)(A) through (b)(12)(i)(C) of this section may, at their option, substitute an example that uses an annual percentage rate that is greater than 17 percent.

(ii) *Estimate of actual repayment period.* A card issuer is not required to comply with paragraphs (b)(12)(i)(A) through (b)(12)(i)(D) of this section if the issuer, at its option:

(A) Establishes and maintains a toll-free telephone number for the purpose of providing consumers with the actual repayment disclosure described in appendix M2; and discloses the following statement on each periodic statement: ''**Notice About Minimum Payments:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For more information, call this toll-free number:________.'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*3*) of this section to provide the actual repayment disclosures described in appendix M2; or

(B) Provides on the periodic statement a disclosure of the actual repayment information as described in appendix M2, substantially similar to Sample G–18(D) in appendix G.

(iii) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Home equity plans subject to the requirements of § 226.5b;

(B) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(C) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(D) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(E) Credit card accounts where a fixed repayment period for the account is disclosed in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period;

(F) A billing cycle where a consumer has paid the entire balance in full for that billing cycle and the previous billing cycle, or had a zero outstanding balance or credit balance in those two billing cycles; and

(G) A billing cycle where the entire outstanding balance is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that feature will amortize the outstanding balance within the fixed repayment period.

(iv) *Toll-free telephone numbers.* (A) *Issuer-operated toll-free telephone number.*

(*1*) Subject to paragraph (b)(12)(iv)(A)(*2*) of this section, if a card issuer provides the disclosures in paragraphs (b)(12)(i)(A) or (b)(12)(i)(B) of this section, the issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with generic repayment estimates, as described in appendix M1.

(*2*) For a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) that provide the disclosures in paragraphs (b)(12)(i)(A) or (b)(12)(i)(B) of this section are not required to establish and maintain a toll-free telephone number for purposes of providing their customers with generic repayment estimates, as described in appendix M1. Instead, small depository institutions may disclose the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(*3*) If a card issuer provides the disclosure in paragraph (b)(12)(ii)(A) of this section, the issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with actual repayment disclosures, as described in appendix M2.

(B) *FTC-operated toll-free telephone number.* The Federal Trade Commission is required by Section 1637(b)(11)(G) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)(G)) to establish and maintain a toll-free telephone number for use by customers of creditors that are subject to the Federal Trade Commission's authority to enforce the act and this regulation.

(C) *Additional information.* In responding to a request for generic repayment estimates or actual repayment disclosures, as described in appendices M1 and M2 respectively, through a toll-free telephone number, neither card issuers nor the FTC may provide any information other than the repayment information required or permitted by appendix M1 or M2, as applicable.

(v) *Definitions. Small depository institution issuers* are card issuers that are depository institutions (as defined by section 3 of the Federal Deposit Insurance Act), including Federal credit unions or State credit unions (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million, as of December 31 of the year prior to the year in which institutions must begin complying with the requirements in § 226.7(b)(12).

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The cut-off time, the amount of the fee, and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the minimum payment disclosure required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, cut-off time, fee and annual percentage rate, ending balance, minimum payment due, and minimum payment disclosure shall be grouped together, substantially similar to Samples G–18(E) or G–18(F) in appendix G.

(14) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-term notice required by § 226.9(c), or a rate increase notice required by § 226.9(g), on or with the periodic statement, must disclose the information in § 226.9(c)(2)(iii)(A) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iii)(B), and § 226.9(g)(3)(ii). This information shall precede the transactions disclosed pursuant to paragraph (b)(2) of this section. See Forms G–18(G) and G–18(H) in appendix G.◄

[(c) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.]

[(d) *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.]

[(e) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.]

[(f) *Amount of finance charge.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.]

[(g) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14, using the term *annual percentage rate.*]

[(h) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.]

[(i) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.]

[(j) *Free-ride period.* The date by which or the time period within the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge payment is received after time period's expiration.]

[(k) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).]

10. Section 226.8 is amended by revising the heading, revising paragraphs (a) and (b), adding a new paragraph (c), and removing and reserving footnotes 16 through 20 to read as follows:

§ 226.8 [Identification of] ►Identifying◄ transactions ►on periodic statements.◄

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

[16] ►[Reserved]◄ [Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if (1) the creditor maintains procedures reasonably adapted to obtain and provide the information; and (2) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e). This applies to transactions that take place outside a state, as defined in § 226.2(a), whether or not the creditor maintains procedures reasonably adapted to obtain the required information].

(a) *Sale credit.*

►(1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification [17] of the property or services purchased, for creditors and sellers that are the same or related; [18] or

(ii) The seller's name; and the city, and state or foreign country where the transaction took place.[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.◄

[(a) *Sale credit.* For each credit transaction involving the sale of property or services, the following rules shall apply:

(1) *Copy of credit document provided.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, the transaction is sufficiently identified if the amount of the transaction and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

[17] ►[Reserved]◄ [As an alternative to the brief identification, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor, and if the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).]

[18] ►[Reserved]◄ [An identification of property or services may be replaced by the seller's name and location of the transaction when: (1) The creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides the consumer with point-of-sale documentation for that transaction; and (4) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).]

[19] ►[Reserved]◄ [The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was a mail or telephone order.]

(2) *Copy of credit document not provided—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification of the property or services purchased.

(3) *Copy of credit document not provided—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.]

(b) *Nonsale credit.* [A nonsale credit transaction is sufficiently identified if the first periodic statement reflecting the transaction discloses] ►For each credit transaction not involving the sale of property or services, the creditor must disclose◄ a brief identification of the transaction; [20] the amount of the transaction; and at least one of the following dates: the date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

►(c) *Alternative creditor procedures; consumer inquiries for clarification or documentation.* The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 226.2(a), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.◄

[20] ►[Reserved]◄ [See footnote 17].

11. Section 226.9 is amended by revising paragraphs (a), (b), (c), and (e), republishing paragraph (d) and (f), adding a new paragraph (g), and removing and reserving footnote 20a to read as follows:

§ 226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—

(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by ►§ 226.6(c)(2)◄ [§ 226.6(d)] at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to [that in appendix G] ►Model Forms G–4 and G–4(A) in appendix G, as applicable◄.

(b) *Disclosures for supplemental credit ►access◄ devices and additional features.*

(1) If a creditor, within 30 days after mailing or delivering the [initial] ►account-opening◄ disclosures under [§ 226.6(a)] ►§§ 226.6(a)(1) or 226.6(b)(1), as applicable◄, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit ►access◄ device ►, including but not limited to checks that access a credit card account,◄ for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. ►Except as provided in paragraph (b)(3) of this section, after◄ [After] 30 days, if the creditor adds a credit feature or furnishes a credit ►access◄ device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) ►Except as provided in paragraph (b)(3) of this section, whenever◄ [Whenever] a credit feature is added or a credit ►access◄ device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by [§ 226.6(a)]

►§§ 226.6(a)(1) or 226.6(b)(1), as applicable◄, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

►(3) *Checks that access a credit card account.* (i) *Disclosures.* For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b)(1) are given, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from disclosures previously given, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G:

(A) If an initial rate that applies to the checks is temporary and is lower than the rate that will apply after the temporary rate expires, the discounted initial rate and the time period during which the discounted initial rate will remain in effect. A creditor must use the term ''introductory'' or ''intro'' in immediate proximity to the listing of the discounted initial rate.

(B) The type of rate that will apply to the checks (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the annual percentage rate that will apply after the discounted initial rate expires. In a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(1); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. If no grace period is given, the issuer must state that no grace period applies and interest will be charged immediately.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given.◄

(c) *Change in terms.*—(1) [*Written notice required.*] ►*Rules affecting home equity plans.* (i) *Written notice required.* For home equity plans subject to the requirements of § 226.5b, whenever◄ [Whenever] any term required to be disclosed under § 226.6 ►(a)◄ is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer[, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default]; the notice shall be given, however, before the effective date of the change.

►(ii)◄ [(2)] *Notice not required.* ►For home equity plans subject to the requirements of § 226.5b, a creditor is not required to provide◄ [No] notice under this section [is required] when the change involves [late payment charges, charges for documentary evidence, or over-the-limit charges;] a reduction of any component of a finance or other charge[; suspension of future credit privileges or termination of an account or plan;] or when the change results from an agreement involving a court proceeding[, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge)].

►(iii)◄ [(3)] ►*Notice to restrict credit*◄ *[Notice for home equity plans].* ►For home equity plans subject to the requirements of § 226.5b, if the◄ [If a] creditor prohibits additional extensions of credit or reduces the credit limit [applicable to a home equity plan] pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

►(2) *Rules affecting open-end (not home-secured) plans.*

(i) *Changes where written advance notice is required.* For plans other than home equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(ii) and (c)(2)(iv) of this section, when a term required to be disclosed under §§ 226.6(b)(1), 226.6(b)(2) or 226.6(c)(1) is changed or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph 9(g) of this section instead of paragraph (c)(2) of this section.

(ii) *Charges not covered by § 226.6(b)(4).* Except as provided in paragraph (c)(2)(iv) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(1) that is not required to be disclosed under § 226.6(b)(4), a creditor may either, at its option:

(A) Comply with the requirements of paragraphs (c)(2)(i) of this section, or

(B) Provide notice of the amount of the charge at a relevant time before the consumer agrees to or becomes obligated to pay the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements.*

(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed pursuant under § 226.6(b)(4), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(*1*) A summary of the changes made to terms described in § 226.6(b)(4);

(*2*) A statement that changes are being made to the account;

(*3*) A statement indicating the consumer has the right to opt-out of these changes, if applicable, and a reference to additional information describing the opt out right provided in the notice, if applicable;

(*4*) The date the changes will become effective;

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice; and

(*6*) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate.

(B) *Format requirements.* (*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iii)(A)(*1*) of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(4). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(4).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iii)(A)(*1*) of this section must be disclosed on the statement beginning on the front of the first page of the periodic statement directly above the grouping of transactions, credits, fees and interest required to be disclosed by §§ 226.7(b)(2), 226.7(b)(3), and 226.7(b)(6), but may continue on the front of the second page if necessary, so long as there is a reference on the first page indicating the information continues on the following page. The summary of changes described in paragraph (c)(1)(iii)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (6) of this section, substantially similar to the format shown in Sample G–20 in appendix G.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iii)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iii)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(*2*) through (*6*) of this section, substantially similar to the format shown in Sample G–20 in appendix G.

(iv) *Notice not required.* For open-end plans not subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(v) of this section) or termination of an account or plan; or when the change results from an agreement involving a court proceeding.

(v) *Reduction of the credit limit.* For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.◄

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §►§◄226.5a, [§] 226.6 and [§] 226.7.

(e) *Disclosures upon renewal of credit or charge card.*

(1) *Notice prior to renewal.* Except as provided in paragraph (e)(2) of this section, a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity, shall mail or deliver written notice of the renewal to the cardholder. The notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (7) that would apply if the account were renewed;[20a] and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee.

(2) *Delayed notice.* ►Alternatively,◄ the disclosures required by paragraph (e)(1) of this section may be provided later than the time in paragraph (e)(1) of this section, but no later than the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account, if the card issuer also discloses at that time that►:◄ [—]

(i) The cardholder has 30 days from the time the periodic statement is mailed or delivered to avoid paying the fee or to have the fee recredited if the cardholder terminates credit availability under the account; and

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provider*—(1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver the cardholder written notice of the change not less than 30 days before the change in providers occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance.

[20a] ►[Reserved]◄ [These disclosures need not be provided in tabular format or in a prominent location.]

Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

►(g) *Increase in rates due to delinquency or default or as a penalty.*

(1) *Increases subject to this section.* For plans other than home equity plans subject to the requirements of § 226.5b, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) *Disclosure requirements for rate increases.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(A) A statement that the consumer's actions have triggered the delinquency or default rate or penalty rate, as applicable;

(B) The date on which the delinquency or default rate or penalty rate will apply;

(C) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period; and

(D) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied, as applicable.

(ii) *Format requirements.* (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of the first page of the periodic statement directly above the grouping of transactions, credits, fees and interest required to be disclosed by §§ 226.7(b)(2), 226.7(b)(3), and 226.7(b)(6), or above the notice described in paragraph (c)(2)(iii)(A) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iii)(A) of this section.◄

12. Section 226.10 is amended by republishing paragraphs (a) and (c), and revising paragraph (b) to read as follows:

§ 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt. ►(See § 226.7(b)(11) for disclosure requirements for certain cut-off times for plans other than home equity plans subject to the requirements of § 226.5b.)◄

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

13. Section 226.11 is revised to read as follows:

§ 226.11 Treatment of credit balances►; account termination◄.

►(a) *Credit balances.*◄ When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall—

►(1)◄[(a)] Credit the amount of the credit balance to the consumer's account;

►(2)◄[(b)] Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

►(3)◄[(c)] Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

►(b) *Account termination.*

(1) Creditors shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three consecutive months. An account is inactive if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.◄

14. Section 226.12 is amended by republishing paragraphs (a), (d), (e), (f), and (g), revising paragraphs (b) and (c), and removing and reserving footnotes 21 through 26 to read as follows:

§ 226.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except—

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

[21] ►[Reserved]◄ [For purposes of this section, "accepted credit card" means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with

(b) *Liability of cardholder for unauthorized use*—(1) ►(i) *Definition of unauthorized use.* For purposes of this section, the term ''unauthorized use'' means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii)◄ *Limitation on amount.* The liability of a cardholder for unauthorized use [22] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice [23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer* [24]—(1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.* ►(i) *General.*◄ The rights stated in paragraphs (c)(1) and (2) of this section apply only if:

[(i)] ►(A)◄ The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

[(ii)] ►(B)◄ The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

►(ii) *Exclusion.* The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.◄

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card

this paragraph becomes an accepted credit card when received by the cardholder.]

[22] ►[Reserved]◄ [''Unauthorized use'' means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.]

[23] ►[Reserved]◄ [''Adequate notice'' means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.]

[24] ►[Reserved]◄ [This paragraph does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash advance checks].

[25] ►[Reserved]◄ [The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.]

[26] ►[Reserved]◄ [The limitations stated in paragraph (c)(3)(i)(A) of this section shall not apply when the person honoring the credit card: (1) Is the same person as the card issuer; (2) is controlled by the card issuer directly or indirectly; (3) is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer; (4) controls the card issuer directly or indirectly; (5) is a franchised dealer in the card issuer's products or services; or (6) has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.]

issuer (subject to the limitations in § 226.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within three business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

15. Section 226.13 is amended by revising paragraphs (a), (b), (d), and (g), republishing paragraphs (c), (e), (f), (h), and (i), and removing and reserving footnotes 27 through 31 to read as follows:

§ 226.13 Billing error resolution.[27]

(a) *Definition of billing error.* For purposes of this section, the term *billing error* means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ ►§§ 226.7(a)(2) or (b)(2), as applicable◄ [226.7(b)] and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under ►§§ 226.7(a)(9) or (b)(9), as applicable,◄ [§ 226.7(k)] no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder [maintains a deposit account with the card issuer and] ►has enrolled in an automatic payment plan offered by the card issuer and◄ has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person

[27] ►[Reserved]◄ [A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.]

[28] ►[Reserved]◄ [The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice].

[29] ►[Reserved]◄ [The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(d) and 226.9(a)].

[30] ►[Reserved]◄ [A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.]

about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

►(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor would be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.◄

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §§ 226.6(a)(1) ►or 226.6(b)(1), as applicable◄, and ►226.7(a)(8) or (b)(8), as applicable◄ [226.7(j)], during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §§ 226.6(a)(1) ►or 226.6(b)(1), as applicable◄, and ►226.7(a)(8) or (b)(8), as applicable◄ [226.7(j)] or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

16. Section 226.14 is amended by revising paragraphs (a), (b), (c), and (d), adding a new paragraph (e), and by removing and reserving footnotes 31a through 35 to read as follows:

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a] ►An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.◄

(b) *Annual percentage rate ►—in general◄ [for §§ 226.5a and 226.5b disclosures, for initial disclosures, and for advertising purposes].* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, ►226.7(a)(4) or (b)(4), 226.9, 226.15,◄ [and] 226.16 ►, and 226.26◄ shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) ►*Effective*◄ *annual percentage rate* ►*for home equity plans*◄ *[for periodic statements].* [The annual percentage rate(s) to be disclosed for purposes of § 226.7(d) shall be

[31] ►[Reserved]◄ [If a consumer submits a billing error notice alleging either the nondelivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed or that the information was correct].

[31a] ►[Reserved]◄ [An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.]

computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(g), shall be determined as follows:]

ALTERNATIVE 1—PARAGRAPH (c) INTRODUCTORY TEXT.

►For home equity plans subject to the requirements of § 226.5b, a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(b)(7) and compute the annual percentage rate in accordance with paragraph (d) of this section. Alternatively, the creditor may disclose an effective annual percentage rate pursuant to § 226.7(a)(7) and compute the rate as follows:

ALTERNATIVE 2—PARAGRAPH (c) INTRODUCTORY TEXT.

A creditor need not disclose an effective annual percentage rate. For home equity plans subject to the requirements of § 226.5b, a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:◄

(1) ►*Solely periodic rates imposed.*◄ If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) ►*Minimum or fixed charge, but not transaction charge, imposed.*◄ If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable [32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33] ►If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.◄

(3) ►*Transaction charge imposed.*◄ If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35] ►Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. *See* appendix F regarding determination of the denominator of the fraction under this paragraph.◄

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (3) of this section.

►(5)◄ [(d)] *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

►(i)◄ [(1)] By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

►(ii)◄ [(2)] By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

ALTERNATIVE 1 ONLY.—PARAGRAPHS (d) AND (e).

(d) *Effective annual percentage rates for open-end (not home-secured) plans.* For plans not subject to the requirements of § 226.5b, the effective annual percentage rate shall be disclosed pursuant to § 226.7(b)(7) and computed as follows:

(1) *Solely periodic rates imposed.* If the finance charge identified in paragraph (e) of this section is determined solely by applying one or more periodic rates used to calculate interest, by multiplying each periodic rate by the number of periods in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge identified in paragraph (e) of this section imposed during the billing cycle is or includes a minimum charge or other charge not attributable to a periodic rate used to calculate interest, and does not include a charge that relates to any specific transaction during the billing cycle, as follows:

(i) *Multifeatured plans.* For multifeatured plans, by feature, as follows:

(A) *Purchases.* Except as provided in paragraph (d)(4) of this section, for purchase transactions, by totaling the minimum charges and other charges identified in paragraph (e) of this section that are not attributable to periodic rates used to calculate interest and not related to a specific transaction, and any finance charge identified in paragraph (e) of this section attributable to periodic rates used to calculate interest on purchase balances, dividing that total by the amount of the balance to which such charges are applicable, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which such charges are applicable, an annual percentage rate cannot be determined under this paragraph (d)(2)(i)(A) and shall be disclosed as 0.00%. If a portion of the finance charge described in this paragraph (d)(2)(i)(A) is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined, at the creditor's option, by dividing the total of the finance charges determined above by the average of the daily purchase balances and multiplying the quotient by the number of billing cycles in a year; or by dividing the total finance charge by the sum of the daily purchase balances, and multiplying the quotient by 365.

[32] ►[Reserved]◄ [If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section.]

[33] ►[Reserved]◄ [Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening of the account, the amount of such charge shall not be included in the calculation of the annual percentage rate.]

[34] ►[Reserved]◄ [See appendix F regarding determination of the denominator of the fraction under this paragraph.]

[35] ►[Reserved]◄ [See footnote 33.]

(B) *Other features.* For other features, by multiplying each applicable periodic rate by the number of periods in a year. If there is no balance on a feature to which a periodic interest rate is applicable, the annual percentage rate for that feature shall be disclosed as 0.00%.

(ii) *Single-featured plans.* Subject to paragraph (d)(4) of this section, for single-featured plans, the annual percentage rate shall be determined by dividing the total finance charge identified in paragraph (e) of this section by the amount of the balance(s) to which such charge is applicable, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which such charges are applicable, an annual percentage rate cannot be determined under this paragraph and shall be disclosed as 0.00%. If a portion of the finance charge described in this paragraph is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined, at the creditor's option, by dividing the total finance charge by the average of the daily purchase balances and multiplying the quotient by the number of billing cycles in a year; or by dividing the total finance charge by the sum of the daily purchase balances, and multiplying the quotient by 365.

(3) *Transaction charge imposed.* If any finance charge imposed during the billing cycle is identified in paragraph (e) of this section and is or includes a charge relating to a specific transaction during the billing cycle, as follows:

(i) *Multifeatured plans.* For multifeatured plans, by feature, as follows:

(A) *Purchases.* Except as provided in paragraph (d)(4) of this section, for purchase transactions, by totaling the minimum charges and other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction, any finance charges identified in paragraph (e) of this section attributable to periodic rates used to calculate interest applicable to purchase transactions, and any charges identified in paragraph (e) of this section relating to a specific purchase transaction, dividing that total by the total of all balances and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle on purchase transactions by the number of periods in a year. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(i)(A).

(B) *Other features.* Except as provided in paragraph (d)(4) of this section, for other types of transactions, by totaling any finance charge identified in paragraph (e) of this section attributable to periodic rates used to calculate interest for the type of transaction, and any charges identified in paragraph (e) of this section relating to a specific transaction of that type, dividing that total by the total of all balance(s) and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle on that type of transaction by the number of periods in a year. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(i)(B).

(ii) *Single-featured plans.* Subject to paragraph (d)(4) of this section, for single-featured plans, the annual percentage rate shall be determined by dividing the total finance charge identified in paragraph (e) of this section by the total of all balance(s) and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(ii).

(4) If the finance charge identified in paragraph (e) of this section imposed during the billing cycle is or includes a minimum charge or other charge not attributable to periodic rates used to calculate interest and the total finance charge identified in paragraph (e) of this section imposed during the billing cycle does not exceed $1.00 for a monthly or longer billing cycle, or the pro rata part of $1.00 for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (d)(2) and (3) of this section.

(e) *Finance charges to be included in the calculation of the effective annual percentage rate under § 226.14(d).* (1) Subject to paragraph (e)(2) of this section, for purposes of the calculations in paragraph (d) of this section, only the following finance charges shall be included:

(i) Charges attributable to a periodic rate used to calculate interest;

(ii) Charges that relate to a specific transaction;

(iii) Charges related to required credit insurance or debt cancellation or debt suspension coverage;

(iv) Minimum charges imposed if, and only if, a charge would otherwise have been determined by applying a periodic rate used to calculate interest to a balance except for the fact that such charge is smaller than the minimum; and

(v) Charges based on the account balance, account activity or inactivity, or the amount of credit available;

(2) Notwithstanding paragraph (e)(1) of this section, the following finance charges shall not be included for purposes of the calculations in paragraph (d) of this section:

(i) A charge related to opening the account; or

(ii) A charge related to continuing or renewing the account and imposed not more often than annually.◄

17. Section 226.16 is amended by republishing paragraph (a), revising paragraphs (b), (c), and (d), adding new paragraphs (e), (f), and (g), and removing and reserving footnote 36d and footnote 36e to read as follows:

§ 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* ►(1) Any term required to be disclosed under § 226.6(b)(1) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under §§ 226.6(a)(1) or 226.6(a)(2) set forth affirmatively or negatively in an advertisement for a home equity plan subject to the requirements of § 226.5b triggers additional disclosures under this section.◄ If any of the terms ►that trigger additional disclosures under paragraph (b)(1) of this section◄ [required to be disclosed under § 226.6] is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:[36d]

[36d] ►[Reserved]◄ [The disclosures given in accordance with § 226.5a do not constitute

Continued

►(i)◄ [(1)] Any minimum, fixed, transaction, activity or similar charge ►that is a finance charge under § 226.4◄ that could be imposed.

►(ii)◄ [(2)] Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

►(iii)◄ [(3)] Any membership or participation fee that could be imposed.

►(2) If an advertisement for credit to finance the purchase of specific goods or services states a minimum monthly payment, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer makes only the minimum payment required for each periodic statement. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the minimum monthly payment.◄

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.*

(1) If a catalog or other multiple-page advertisement, or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication], gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication] complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

(d) *Additional requirements for home equity plans.* (1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under ►§ 226.6(a)(6)◄ [§ 226.6(a) or (b)] or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.[36e] ►A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.◄

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home equity plan as ''free money'' or contain a similarly misleading term.

►(e) *Introductory Rates.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* The term *introductory rate* means any rate of interest applicable to a credit card account for an introductory period if that rate is less than the advertised annual percentage rate that will be in effect at the end of the introductory period. An ''introductory period'' means the maximum time period for which the introductory rate may be applicable.

(3) *Stating the term ''introductory''.* If any annual percentage rate that may be applied to the account is an introductory rate, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate.

(4) *Stating the introductory period and post-introductory rate.* If any annual percentage rate that may be applied to the account is an introductory rate, the following must be stated in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the introductory rate:

(i) When the introductory rate will end; and

(ii) The annual percentage rate that will apply after the end of the introductory period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(e)(4), or 226.16(b)(1)(ii) as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

(5) *Envelope excluded.* The requirements in paragraph (e)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.◄

►(f) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (b)(1) of this section may alternatively comply with paragraph (b)(1) of this section by stating the information required by paragraph (b)(1)(ii) of this section, and listing a toll-free telephone number along with a reference that such number may be used by consumers to obtain the additional cost information.◄

►(g) *Misleading terms.* An advertisement may not refer to an annual percentage rate as ''fixed'', or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.◄

advertising terms for purposes of the requirements of this section.]

[36e] ►[Reserved]◄ [See footnote 10b.]

18. In Part 226, Appendix E is revised to read as follows:

Appendix E to Part 226—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

The following provisions of Subpart B apply if credit cards are issued and [(1)] the card issuer and the seller are the same or related persons; [(2)] no finance charge is imposed; [(3)] consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and [(4)] no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month[:]►. The term ''related person'' refers to, for example, a franchised or licensed seller of a creditor's product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.◄

►1.◄ *Section* ►*226.6(c)(2)*◄ *[226.6(d)], and, as applicable,* ►*§§ 226.6(1)(i)(B) and 226.6(c)(1)*◄ *[section 226.6(b) and (c)].* The disclosure required by ►§ 226.6(b)(1)(i)(B)◄ [section 226.6(b)] shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. ►A tabular format is not required.◄

►2.◄ *Section* ►*226.7(a)(2) or § 226.7(b)(2), as applicable; § 226.7(a)(9) or § 226.7(b)(9), as applicable*◄ *[226.7(b) and 226.7(k)].* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

►3.◄ *Section 226.9(a).* Creditors may comply by mailing or delivering the statement required by ►§ 226.6(c)(2)◄ [section 226.6(d)] (see appendix G–3) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by ►§ 226.6(c)(2)◄ [section 226.6(d)] or an alternative billing error rights statement substantially similar to that in appendix G–4, with each invoice sent to a consumer.

►4.◄ *Section 226.9(c).* ►A tabular format is not required.◄

►5.◄ *Section 226.10.*

►6.◄ *Section 226.11* ►*(a)*◄*.* This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

►7.◄ *Section 226.12 including* ►§◄ *[section] 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

►8.◄ *Section 226.13, as applicable.* All references to periodic statement shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

►9.◄ Section 226.15, as applicable.

19. In Part 226, Appendix F is revised to read as follows:

Appendix F to Part 226—Annual Percentage Rate Computations for Certain Open-End Credit Plans

In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances [32] subject to periodic rates to the sum of the amounts subject to specific transaction charges. ►(Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase ''sum of the balances'' shall also mean the ''average of daily balances.'')◄ In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½ percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½ percent × 12 = 42 percent.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼ percent × 12 = 27 percent.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½ percent × 12 = 30 percent.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½ percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔ percent × 12 = 20 percent.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3 percent of the transaction amount or $3.00. The periodic rate is 1½ percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = − $50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾ percent × 12 = 45 percent.

20. In Part 226, Appendix G is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Revising Forms G–1, G–2, G–10(A), G–10(B), G–11, and G–13(A) and (B);

C. Revising the headings of Forms G–3, G–4, and G–10(C);

D. Adding new Forms G–2(A), G–3(A), G–4(A), G–10(D) and (E), G–16(A) and (B), G–17(A) through (C), G–18(A)

[32] ►[Reserved]◄ [Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase ''sum of the balances'' shall also mean the ''average of daily balances.'']

through (H), G–19, G–20, and G–21 in numerical order; and

E. Removing and removing and reserving Form G–12.

Appendix G to Part 226—Open–End Model Forms and Clauses

G–1 Balance Computation Methods Model Clauses (§§ 226.6 and 226.7)
G–2 Liability for Unauthorized Use Model Clause ►(Home equity Plans)◄ (§ 226.12)
►G–2(A) Liability for Unauthorized Use Model Clause ►(Plans Other Than Home equity Plans) (§ 226.12)◄
G–3 Long-Form Billing-Error Rights Model Form ►(Home equity Plans)◄ (§§ 226.6 and 226.9)
►G–3(A) Long-Form Billing-Error Rights Model Form ►(Plans Other Than Home equity Plans) ◄(§§ 226.6 and 226.9)◄
G–4 Alternative Billing-Error Rights Model Form ► (Home equity Plans)◄ (§ 226.9)
►G–4(A) Alternative Billing-Error Rights Model Form (Plans Other Than Home equity Plans) (§ 226.9)◄
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))
G–10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))
G–10(C) Applications and Solicitations ►Sample (Credit Cards)◄ [Model Form (Charge Cards)] (§ 226.5a(b))
►G–10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))◄
►G–10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))◄
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 ►Reserved◄ [Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))]
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
G–14A Home Equity Sample
G–14B Home Equity Sample
G–15 Home Equity Model Clauses
►G–16(A) Debt Suspension Model Clause (§ 226.4(d)(3))◄
►G–16(B) Debt Suspension Sample (§ 226.4(d)(3))◄
►G–17(A) Account-opening Model Form (§ 226.6(b)(4))◄
►G–17(B) Account-opening Sample (§ 226.6(b)(4))◄
►G–17(C) Account-opening Sample (§ 226.6(b)(4))◄
►G–18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))◄
►G–18(B) Fee-inclusive APR Sample (§ 226.7(b))◄
►G–18(C) Late Payment Fee Sample (§ 226.7(b))◄
►G–18(D) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))◄
►G–18(E) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))◄
►G–18(F) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))◄
►G–18(G) Periodic Statement Form◄
►G–18(H) Periodic Statement Form◄
►G–19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))◄
►G–20 Change-in-Terms Sample (§ 226.9(c)(2))◄
►G–21 Penalty Rate Increase Sample (§ 226.9(g)(3))◄

G–1—Balance Computation Methods Model Clauses

(a) Adjusted balance method.

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''adjusted balance'' of your account. We get the ''adjusted balance'' by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method.

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $____.]

(c) Average daily balance method (excluding current transactions).

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''average daily balance'' of your account (excluding current transactions). To get the ''average daily balance'' we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(d) Average daily balance method (including current transactions).

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ''average daily balance'' of your account (including current transactions). To get the ''average daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending balance method.

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

G–2—Liability for Unauthorized Use Model Clause ►(Home equity Plans)◄

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

►G–2A—Liability for Unauthorized Use Model Clause (Plans Other Than Home equity Plans)

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at: [address] [address listed on your bill], or call us at [telephone number].

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].◄

G–3—Long-Form Billing-Error Rights Model Form ►(Home equity Plans)◄

Your Billing Rights

Keep This Notice for Future Use

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

►G–3(A)—Long-Form Billing-Error Rights Model Form (Plans Other Than Home equity Plans)

Your Billing Rights: Keep This Document for Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]
[Creditor Address]

In your letter, give us the following information:

• *Account information:* Your name and account number.

• *Dollar amount:* The dollar amount of the suspected error.

• *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

• Within 60 days after the error appeared on your statement.

• At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing.* You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

• We cannot try to collect the amount in question, or report you as delinquent.

• The charge in question may remain on your statement, and we may continue to charge you interest on that amount.

• While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

• We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

• *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.

• *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you use your credit card to make a purchase and you are dissatisfied with the goods or services that you receive, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must have tried in good faith to correct the problem with the merchant.

4. You must not yet have fully paid for the purchase.

If you are dissatisfied with a purchase that conforms to the four criteria above, contact us in writing at:

[Creditor Name]
[Creditor Address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.◄

G–4—Alternative Billing-Error Rights Model Form ►(Home equity Plans)◄

Billing Rights Summary

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

• Your name and account number.

• The dollar amount of the suspected error.

• Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.

►G–4(A)—Alternative Billing-Error Rights Model Form (Plans Other Than Home equity Plans)

What To Do If You Think You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]
[Creditor Address]

In your letter, give us the following information:

• *Account information:* Your name and account number.

• *Dollar amount:* The dollar amount of the suspected error.

• *Description of Problem:* If you think there is an error on your bill describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing.* You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

• We cannot try to collect the amount in question, or report you as delinquent.

• The charge in question may remain on your statement, and we may continue to charge you interest on that amount.

• While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

• We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you use your credit card to make a purchase and you are dissatisfied with the goods or services that you receive, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must have tried in good faith to correct the problem with the merchant.

4. You must not yet have fully paid for the purchase.

If you are dissatisfied with a purchase that conforms to the four criteria above, contact us in writing at:

[Creditor Name]
[Creditor Address]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.◀

* * * * *

BILLING CODE 6210–01–P

G-10(A) Applications and Solicitations Model Form (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable] [Statement about balance transfer fee and cross reference, if applicable] [Payment allocation notice, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable] [Statement about cash advance fee and cross reference, if applicable] [Payment allocation notice, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
Grace Period on Purchases	[Description of grace period for purchases or statement that no grace period applies]
Website for Additional Information	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
Penalty Fees	
• Late Payment	[Description of late payment fee] [Cross reference to penalty rate, if applicable]
• Over-the-Credit Limit	[Description of over-the-credit limit fee] [Cross reference to penalty rate, if applicable]
• Returned Payment	[Description of returned payment fee] [Cross reference to penalty rate, if applicable]
Other Fees	
• Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

Balance Computation Method: [Description of balance computation method]

G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment twice in a six-month period; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.00.
Grace Period on Purchases	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest.
Website for Additional Information	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at http://www.frb.gov/location.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(C) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 12.99%, or 19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $0.50.
Grace Period on Purchases	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest.
Website for Additional Information	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at http://www.frb.gov/location.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only $68 (or $53 if you choose to have an additional card).
• Annual Fee	**$60**
• Account Set-up Fee	**$30** (one-time fee)
• Program Fee	**$85** (one-time fee)
• Participation Fee	**$84** annually ($7 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$60** annually ($5 per month on closed accounts with an outstanding balance of $30 or more)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(D) Applications and Solicitations Model Form (Charge Cards)

Payment Information
[A statement that charges incurred through use of the charge card are due when the periodic statement is received]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit limit fee]
• Returned Payment	[Description of returned payment fee]

G-10(E) Applications and Solicitations Sample (Charge Cards)

Payment Information
All charges made on this charge card are due and payable when you receive your periodic statement.

Fees	
Annual Fee	**$50**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	**$31** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$30**
• Returned Payment	**$30**

G–11—Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (*month/year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)] [write to us at (*address*)].

[(b) Disclosure With Account Opening Statement

To find out about changes in the information in this [application]/[solicitation], [call us at (*telephone number*)] [write to us at (*address*)].

►(b)◄ [(c)] No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (*telephone number*) or write to us at (*address*).

G–12 ► [Reserved] ◄ [—Charge Card Model Clause (When Access to Plan Offered by Another)

This charge card may allow you to access credit offered by another creditor. Our decision about issuing you a charge card will be independent of the other creditor's decision about allowing you access to a line of credit. Therefore, approval by us to issue you a card does not constitute approval by the other creditor to grant you credit privileges. If we issue you a charge card, you may receive it before the other creditor decides whether or not to grant you credit privileges.]

G–13(A)—Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $____per____.]

[Your coverage will be affected by the following:

[ ] The elimination of a type of coverage previously provided to you. [(explanation)] [See____of the attached policy for details.]

[ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See__of the attached policy or certificate for details.]

[ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(explanation)] [See__of the attached policy or certificate for details.]

[ ] A restriction on the eligibility for benefits for you or others. [(explanation)] [See__ of the attached policy or certificate for details.]

[ ] A restriction in the definition of ''disability'' or other key term of coverage. [(explanation)] [See__of the attached policy or certificate for details.]

[ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See__ of the attached policy or certificate for details.]

[ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See__ of the attached policy or certificate for details).][The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

G–13(B)—Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

* * * * *

►G–16(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X ____ ◄

►G–16(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X ____ ◄

BILLING CODE 6210–01–P

G-17(A) Account-opening Model Form

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable] [Statement about balance transfer fee and cross reference, if applicable] [Payment allocation notice, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable] [Statement about cash advance fee and cross reference, if applicable] [Payment allocation notice, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
Grace Period	[Description of grace period for purchases, cash advances, balance transfers or any other credit extended or statement that no grace period applies]
Website for Additional Information	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 [Description of balance transfer fee] [Description of cash advance fee] [Description of foreign transaction fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Cross reference to penalty rate, if applicable] [Description of over-the-credit limit fee] [Cross reference to penalty rate, if applicable] [Description of returned payment fee] [Cross reference to penalty rate, if applicable]
Other Fees • Required [insert name of required insurance, or debt cancellation or suspension coverage]	 [Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

Balance Computation Method: [Description of balance computation method] [Reference to account agreement for more details]

Billing Rights: [Reference to account agreement for details on billing-error rights]

G-17(B) Account-opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment twice in a six-month period; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.00.
Grace Period	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest. There is no grace period for cash advances and balance transfers.
Website for Additional Information	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at http://www.frb.gov/location.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-17(C) Account-opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $0.50.
Grace Period	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest. There is no grace period for cash advances or balance transfers.
Website for Additional Information	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at http://www.frb.gov/location.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only $68 (or $53 if you choose to have an additional card).
• Annual Fee	**$60**
• Account Set-up Fee	**$30** (one-time fee)
• Program Fee	**$85** (one-time fee)
• Participation Fee	**$84** annually ($7 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$60** annually ($5 per month on closed accounts with an outstanding balance of $30 or more)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-18(A) Periodic Statement Transactions; Interest Charges; Fees Sample

Transactions				
Reference Number	**Trans Date**	**Post Date**	**Description of Transaction or Credit**	**Amount**
		Payments and Other Credits		
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–
045148714518979874	3/4	3/5	Store #13	$13.45–
		Purchases		
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/25	2/26	Store #3	$4.63
554328608008W90M0	2/25	2/26	Store #4	$114.95
054830709LYMRPT4L	2/25	2/26	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
2564561023184102315	2/28	3/1	Store #11	$14.76
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/4	Store #14	$2.35
8456152156181SDSA	3/5	3/6	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
		Cash Advances		
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
		Balance Transfers		
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
		Fees		
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee *Transaction Fee*	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee *Transaction Fee*	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee *Transaction Fee*	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
		Interest Charged		
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$18.27

G-18(B) Periodic Statement Fee-Inclusive APR Sample

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$6.31	$0.00	14.99%
Cash Advances	$4.58	$10.90	58.42%
Balance Transfers	$0.00	$23.55	36.00%

►G–18(C) Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.◄

►G–18(D) Actual Repayment Period Sample Disclosure on Periodic Statement

(a) When Negative Amortization Does Not Occur.

Notice about Minimum Payments: If you make only the minimum payment each month, it will take you about 13 months to repay the balance shown on this statement.

(b) When Negative Amortization Occurs.

Notice about Minimum Payments: You will never repay the outstanding balance shown on this statement if you only pay the minimum payment.◄

BILLING CODE 6210–01–P

G-18(E) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Notice about Minimum Payments: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

G-18(F) Periodic Statement New Balance, Due Date and Late Payment Sample (Open-End Plans (Non-credit-card Accounts))

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G-18(G) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Summary of Account Activity	
Previous Balance	$535.07
Payments	-$450.00
Other Credits	-$13.45
Purchases	+$529.57
Balance Transfers	+$785.00
Cash Advances	+$318.00
Past Due Amount	+$0.00
Fees Charged	**+$69.45**
Interest Charged	**+$10.89**
New Balance	$1,784.53
Credit limit	$2,000.00
Available credit	$215.47
Statement closing date	3/22/2007
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Notice about Minimum Payments: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement. The effective date of these changes is 5/10/07. Note: The change to your APR for purchases described below wil not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 5/10/07	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–
045148714518979874	3/4	3/5	Store #13	$13.45–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$114.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
2564894185189LKDFID	2/27	2/28	Store #10	$32.87

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$1,784.53**
Minimum Payment Due	**$48.00**
Payment Due Date	**4/20/07 (before 2:00 pm)**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Purchases (cont.)	
2564561023184102315	2/28	3/1	Store #11	$14.76
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/6	Store #14	$2.35
8456152156181SDSA	3/5	3/12	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
			Cash Advances	
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
			Balance Transfers	
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee *Transaction Fee*	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee *Transaction Fee*	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee *Transaction Fee*	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
			Interest Charged	
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$512.14	$6.31
Cash Advances	21.99% (v)	$253.50	$4.58
Balance Transfers	0.00%	$637.50	$0.00

(v) = Variable Rate

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$6.31	$0.00	14.99%
Cash Advances	$4.58	$10.90	58.42%
Balance Transfers	$0.00	$23.55	36.00%

G-18(H) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Summary of Account Activity	
Previous Balance	$80.52
Payments	-$50.00
Other Credits	+$0.00
Purchases	+$52.13
Balance Transfers	+$0.00
Cash Advances	+$0.00
Past Due Amount	+$0.00
Fees Charged	**+$37.00**
Interest Charged	**+$0.00**
New Balance	$119.65
Credit limit	$2,000.00
Available credit	$1,880.35
Statement closing date	3/22/2007
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information	
New Balance	$119.65
Minimum Payment Due	$10.00
Payment Due Date	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Notice about Minimum Payments: If you make only the minimum payment each month, it will take you about 13 months to repay the balance shown on this statement.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. Effective 5/10/07, we will apply the penalty rate to all balances on this account. We may keep your APRs at this level indefinitely.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$50.00–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$2.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$4.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$4.35
841517877845AKOJIO	2/25	2/26	Store #7	$2.35
895848561561894KOH	2/26	2/27	Store #8	$7.68
1871556189456SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFID	2/27	2/28	Store #10	$2.87
55542818705RASD0X	3/1	3/2	Store #11	$3.76
178105417841045784	3/2	3/6	Store #12	$2.35
8456152156181SDSA	3/5	3/12	Store #13	$2.92

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$119.65**
Minimum Payment Due	**$10.00**
Payment Due Date	**4/20/07 (before 2:00 pm)**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	3/22	3/22	Minimum Charge *Fixed Fee*	$2.00
			TOTAL FEES FOR THIS PERIOD	**$37.00**
			Interest Charged	
			Interest Charge on Purchases	$0.00
			Interest Charge on Cash Advances	$0.00
			TOTAL INTEREST FOR THIS PERIOD	**$0.00**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$113.80	$0.00
Cash Advances	21.99% (v)	$0.00	$0.00
Balance Transfers	0.00%	$0.00	$0.00

(v) = Variable Rate

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$0.00	$2.00	21.09%
Cash Advances	$0.00	$0.00	0.00%
Balance Transfers	$0.00	$0.00	0.00%

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1.7% (Intro. APR through your November 2007 billing cycle) After November 2007, you will be charged the APR for Cash Advances, currently 21.99%.
Fee	Either $5 or 3% of the amount of each transfer, whichever is greater.
Grace Period	There is no grace period for transactions you make with these checks; we will begin charging interest on the transaction date.

G-20 Change-in-Terms Sample

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement. The effective date of these changes is 5/10/07. Note: The change to your APR for purchases described below wil not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 5/10/07	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

G-21 Penalty Rate Increase Sample

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. Effective 5/10/07, we will apply the penalty rate to all balances on this account. We may keep your APRs at this level indefinitely.

21. Under Part 226, Appendix H is amended by revising the table of contents, and adding new forms H–17(A) and H–17(B) to read as follows:

Appendix H to Part 226—Closed-End Model Forms and Clauses

* * * * *

►H–17(A) Debt Suspension Model Clause◄

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X ________◄

H–17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X ________◄

22. Under Part 226, a new Appendix M1, Appendix M2, and Appendix M3 are added to read as follows:

►Appendix M1 to Part 226—Generic Repayment Estimates

(a) *Calculating generic repayment estimates.*

(1) *Definitions.* (i) Retail credit card means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control.

(ii) ''General-purpose credit card'' means a credit card other than a retail credit card.

(2) *Minimum payment formula.*

(i) *Issuer-operated toll-free telephone number.*

(A) *General-purpose credit cards.* When calculating the generic repayment estimate for general-purpose credit cards, card issuers must use the minimum payment formula that applies to most of its general-purpose credit card accounts. The issuer must use this ''most common'' formula to calculate the generic repayment estimate for all of its general-purpose credit card accounts, regardless of whether this formula applies to a particular account. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all general-purpose card accounts held by the issuer on that day, and determine which formula applies to the most accounts. If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general-revolving feature to determine which formula is most common. Card issuers must re-evaluate which minimum payment formula is most common every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this appendix by July 5 of a particular year. The issuer may choose any day between January 5 and July 4 of that year to use in deciding the minimum payment formula that is most common. For the following and each subsequent year, the issuer must again choose a day between January 5 and July 4 to use in deciding the minimum payment formula that is most common, but the day that is chosen need not be the same day chosen the previous year.

(B) *Retail credit cards.* When calculating the generic repayment estimate for retail credit cards, card issuers must use the minimum payment formula that applies to most of their retail credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, the card issuer must group credit card accounts for each retailer separately, and determine the minimum payment formula that is most common to each retailer. The issuer must use the ''most common'' formula for each retailer, regardless of whether this formula applies to a particular account for that retailer. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all retail card accounts for each retailer held by the issuer on that day, and determine which formula applies to the most accounts for that retailer. If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general revolving feature to determine which formula is most common for each retailer. Card issuers must re-evaluate which minimum payment formula is most common for retail credit card accounts with respect to each retailer every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this appendix by July 5 of a particular year. The issuer may choose any day between January 5 and July 4 of that year to use in deciding the minimum payment formula that is most common. For the following year, the issuer must again choose a day between January 5 and July 4 to use in deciding the minimum payment formula that is most common, but the day that is chosen need not be the same day the previous year.

(ii) *FTC-operated toll-free telephone number.* When calculating the generic repayment estimate, the FTC must use the following minimum payment formula: 5 percent of the outstanding balance, or $15, whichever is greater.

(3) *Annual percentage rate.* When calculating the generic repayment estimate, credit card issuers and the FTC must use the highest annual percentage rate on which the consumer has outstanding balances. An issuer and the FTC may use an automated system to prompt the consumer to enter the highest annual percentage rate on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response.

(4) *Beginning balance.* When calculating the generic repayment estimate, credit card issuers and the FTC must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. An issuer and the FTC may use an automated system to prompt the consumer to enter the outstanding balance included on the last periodic statement received by the consumer, and calculate the generic repayment estimate based on the consumer's response.

(5) *Assumptions.* When calculating the generic repayment estimate, credit card issuers and the FTC must make the following assumptions. Card issuers and the FTC must make these assumptions regardless of whether they match the actual terms of the consumer's account.

(i) Only minimum monthly payments are made each month.

(ii) No additional extensions of credit are obtained.

(iii) There is no grace period.

(iv) The final payment pays the account in full (i.e., there is no residual interest after the final month in a series of payments).

(v) The average daily balance method is used to calculate the balance.

(vi) All months are the same length (i.e., 30.41667 days long). Leap year is ignored.

(vii) Payments are credited on the last day of the month.

(b) *Disclosing the generic repayment estimate to consumers.*

(1) *Required disclosures.* Except as provided in paragraph (b)(3) of this section, when responding to a request for generic repayment estimates through a toll-free telephone number, credit card issuers and the FTC must make the following disclosures:

(i) The generic repayment estimate. If the generic repayment estimate calculated above is less than 2 years, credit card issuers and the FTC must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The beginning balance on which the generic repayment estimate is calculated.

(iii) The APR on which the generic repayment estimate is calculated.

(iv) The assumption that only minimum payments are made and no other amounts are added to the balance.

(v) The fact that the repayment period is an estimate, and the actual time it may take to pay off the balance by only making minimum payments will differ based on the consumer's account terms and future account activity.

(2) *Model form.* Credit card issuers and the FTC may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this section:

It will take approximately __ [months/years] to pay off a ____ balance at ____% APR, assuming that you only make minimum payments and no other amounts are added to the balance. This repayment period is only an estimate. The actual time it may take you to pay off this balance by only making minimum payments will differ based on your account terms and future account activity.

(3) *Negative amortization.* If negative amortization occurs when calculating the repayment estimate, credit card issuers and the FTC must disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by paying only the minimum payment. Card issuers and the FTC may use the following disclosure to meet the requirements set forth in this paragraph: ''Based on the assumptions that we used to calculate the time to repay your balance, you will never repay the balance if you only make the minimum payment.''

(4) *Permissible disclosures.* Credit card issuers and the FTC may provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this section are given:

(i) A description of the assumptions used to calculate the generic repayment estimate as described in paragraph (a)(5) of this section.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this section, except they also must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this section, except they also must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period. In calculating the monthly payment amount, card issuers and the FTC must use the same terms described in paragraph (a) of this section, as appropriate.

(v) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the generic repayment estimate.

Appendix M2 to Part 226—Actual Repayment Disclosures

(a) *Calculating actual repayment disclosures.*

(1) *Definitions.* (i) ''Retail credit card'' means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers.

(ii) ''General purpose credit card'' means a credit card other than a retail credit card.

(iii) ''Promotional terms'' means terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.

(2) *Minimum payment formulas.* When calculating actual repayment disclosures, credit card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If any promotional terms related to payments currently apply to a cardholder's account, such as a ''deferred payment plan,'' credit card issuers may assume no promotional terms apply to the account.

(3) *Annual percentage rate.* When calculating annual repayment estimates, a credit card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates currently apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers may assume no promotional terms apply to the account.

(4) *Beginning balance.* When calculating the actual repayment disclosure, credit card issuers must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle.

(5) *Assumptions.* When calculating the actual repayment disclosure, credit card issuers may make the following assumptions regardless of whether they are the same as the actual terms of the consumer's account.

(i) Only minimum monthly payments are made each month.

(ii) No additional extensions of credit are obtained, including new purchases, transactions, fees, rebates, charges or other activity.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate.

(iv) There is no grace period.

(v) The final payment pays the account in full (i.e., there is no residual finance charge after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length (i.e., 30.41667 days long). Leap year is ignored.

(viii) Payments are credited on the last day of the month.

(ix) Payments are allocated to lower APR balances before higher APR balances.

(b) *Disclosing the actual repayment disclosure to consumers through a toll-free telephone number.*

(1) *Required disclosures.* Except as provided in paragraph (b)(3) of this section, when responding to a request for actual repayment disclosures through a toll-free telephone number, credit card issuers must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal or greater than 0.5.

(ii) The outstanding balance on which the actual repayment disclosure is calculated.

(iii) The assumption that only minimum payments are made.

(iv) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(2) *Model form.* Credit card issuers may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this section:

Your outstanding balance as of the last billing statement was $______. If you make only the minimum payment each month it would take you about ______ [months/years] to repay this outstanding balance. This repayment period is only an estimate and is based on several assumptions about your account terms and future activity on the account.

(3) *Negative amortization.* If negative amortization occurs when calculating the repayment estimate, credit card issuers must disclose to the consumer that based on the current terms applicable to the consumer's account, the consumer will not pay off the balance by paying only the minimum payment. Card issuers may use the following disclosure to meet the requirements set forth in this paragraph: ''Your outstanding balance as of the last billing statement was $______. You will never repay the balance if you only make the minimum payment.''

(4) *Permissible disclosures.* Credit card issuers may provide the following information when responding to a request for the actual repayment disclosure through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this section are given:

(i) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this section.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, credit card issuers must use the same terms described in paragraph (a) of this section used to calculate the actual repayment disclosure, except they also must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this section to calculate the actual repayment disclosure, except they also must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this section, as appropriate.

(v) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

(c) *Disclosing the actual repayment disclosures on periodic statements.*

(1) *Required disclosures.* Except as provided in paragraph (c)(3) of this section, when providing the actual repayment disclosure on the periodic statement, credit card issuers must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The fact that the repayment period is based on the current outstanding balance shown on the account.

(iii) The assumption that only minimum payments are made.

(2) *Model form.* Credit card issuers may use the disclosure in appendix G–18(D) to meet the requirements set forth in paragraph (c)(1) of this section.

(3) *Negative amortization.* If negative amortization occurs when calculating the actual repayment disclosure, credit card issuers must disclose to the consumer that based on the current terms applicable to the consumer's account, the consumer will not pay off the balance by making only the minimum payment. Card issuers may use the disclosure in appendix G–18(D) to meet the requirements set forth in this paragraph.

(4) *Permissible disclosures.* Card issuers may provide the following information on the periodic statement, so long as the following information is provided after the disclosures in paragraph (c)(1) are given:

(i) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(ii) A reference to another location on the statement where the consumer may find additional information about the repayment estimate.

(iii) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this section.

(iv) The length of time it would take to repay the outstanding balance shown on the statement if an additional amount was paid each month in addition to the minimum payment amount. Card issuers may choose the additional amount. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this section used to calculate the actual repayment period, except they also must assume the additional amount was paid each month in addition to the minimum payment amount.

(v) The length of time it would take to repay the outstanding balance shown on the statement if the consumer made a fixed payment amount each month. Card issuers may choose the amount of the fixed payment. In calculating this estimate, card issuers must use the same terms described in (a) of this section used to calculate the actual repayment disclosure, except they also must assume the consumer made a fixed payment amount each month.

(vi) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months. Card issuers may choose the specific number of months used in the calculation. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this section, as appropriate.

(vii) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(viii) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

Appendix M3 to Part 226—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

(a) *Generic repayment estimates.* The following is an example of how to calculate the generic repayment estimates using the guidance in appendix M1 where the APR is 17 percent, the outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
DATA ONE;
RATE1=0.17; *APR;
TBAL=1000; *OUTSTANDING BALANCE;
*INITIALIZE COUNTER OF MONTHS,
    PERIODIC RATE AND FINANCE
    CHARGES;
MONTHS=0;
PERRATE1=0;
FC1=0;
*ABSOLUTE MINIMUM PAYMENT RULE
    USED;
MINPMT=20;
*CALCULATE PERIODIC RATE;
PERRATE1=((1+(RATE1/
    365))**30.41667)−1; *ADB METHOD;
*CALCULATE MONTHS TO PAYOFF;
DO WHILE (TBAL GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PAYMENT RULE;
  FC1=TBAL*PERRATE1; *CALCULATE
    FINANCE CHARGE;
  TBAL=TBAL+FC1; *ADD FINANCE
    CHARGE TO BALANCE;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  TBAL = TBAL−PMT;
END;
*RESULTS;
PROC PRINT DATA=ONE;
VAR MONTHS;
PROC PRINT DATA=ONE;
VAR PMT FC1 TBAL PERRATE1;
```

(b) *Actual Repayment Disclosures.* The following is an example of how to calculate the actual repayment disclosures using the guidance in M2 where three APRs apply, the total outstanding balance is $1000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
DATA ONE;
*INITIALIZE NUMBERS OF APRS,
    PERIODIC RATES, BALANCES, AND
    PERIODIC FINANCE CHARGES;
ARRAY RATE(3);
ARRAY PERRATE(3);
ARRAY BAL(3);
ARRAY FC(3);
*INITIALIZE APRS AND BALANCES,
    PLACING RATES FROM LOWEST TO
    HIGHEST;
RATE1=0.019; *APR #1;
RATE2=0.17; *APR #2;
RATE3=0.21; *APR #3;
BAL1=500; *BALANCE ASSOCIATED WITH
    APR #1;
BAL2=250; *BALANCE ASSOCIATED WITH
    APR #2;
BAL3=250; *BALANCE ASSOCIATED WITH
    APR #3;
*INITIALIZE TOTAL BALANCE AND
    COUNTER OF MONTHS;
TBAL=0;
MONTHS=0;
*ABSOLUTE MINIMUM PAYMENT RULE
    USED;
MINPMT=20;
*CALCULATE PERIODIC RATES AND
    INITIAL TOTAL BALANCE;
DO I=1 TO 3;
PERRATE(I)=((1+(RATE(I)/
    365))**30.41667)−1; *ADB METHOD;
TBAL=TBAL+BAL(I);
END;
*CALCULATE MONTHS TO PAYOFF FOR
    LOWEST RATE BALANCE;
DO WHILE (BAL(1) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  DO I=1 TO 3; FC(I)=BAL(I)*PERRATE(I);
    *CALCULATE FINANCE CHARGES;
  END;
  DO I=1 TO 3; BAL(I)=BAL(I)+FC(I);
    TBAL=TBAL+FC(I); *ADD FINANCE
    CHARGES TO BALANCES;
  END;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(1)=BAL(1)−PMT; *APPLYING
    PAYMENT TO LOWEST APR
    BALANCE;
  TBAL=TBAL−PMT;
END;
*CALCULATE MONTHS TO PAYOFF FOR
    NEXT LOWEST RATE BALANCE, IF
    ANY, CARRYING OVER NUMBER
    FROM LOWER RATE BALANCE;
BAL(2)=BAL(2)+BAL(1);
DO WHILE (BAL(2) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  DO I=2 TO 3; FC(I)=BAL(I)*PERRATE(I);
    *CALCULATE FINANCE CHARGES;
  END;
  DO I=2 TO 3; BAL(I)=BAL(I)+FC(I);
    TBAL=TBAL+FC(I); *ADD FINANCE
    CHARGES TO BALANCES;
  END;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(2)=BAL(2)−PMT; *APPLYING
    PAYMENT TO SECOND LOWEST APR
    BALANCE;
  TBAL=TBAL−PMT;
END;
*CALCULATE MONTHS TO PAYOFF FOR
    NEXT LOWEST RATE BALANCE, IF
    ANY, CARRYING OVER NUMBER
    FROM LOWER RATE BALANCES;
BAL(3)=BAL(3)+BAL(2);
DO WHILE (BAL(3) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  FC(3)=BAL(3)*PERRATE(3);
    *CALCULATE FINANCE CHARGE;
  BAL(3)=BAL(3)+FC(3); *ADD FINANCE
    CHARGES TO BALANCE;
  TBAL=TBAL+FC(3);
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(3)=BAL(3)−PMT; *APPLYING
    PAYMENT TO REMAINING BALANCE;
  TBAL=TBAL−PMT;
END;
*RESULTS;
PROC PRINT DATA=ONE;
VAR MONTHS;
PROC PRINT DATA=ONE;
VAR PMT FC1 BAL1 FC2 BAL2 FC3 BAL3
    TBAL; ◄
```

23. In Supplement I to Part 226:

A. Revise the Introduction.

B. Revise subpart A.

C. In Subpart B, revise sections 226.5 through 226.14 and 226.16.

D. Revise Appendix F, and Appendixes G and H.

E. Amend Appendix G by revising paragraphs 1. through 3. and 5. through 6., republishing paragraph 7., and adding paragraph 8.

F. Remove the References paragraph at the end of sections 226.1, 226.2, 226.3, 226.4, 226.5, 226.6, 226.7, 226.8, 226.9, 226.10, 226.11, 226.12, 226.13, 226.14, 226.16, Appendix E and Appendix F.

Supplement I to Part 226—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly

authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

[3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982 only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.]

►3.◄ [4.] *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) [Throughout the commentary and regulation, reference to the regulation should be construed to refer to revised Regulation Z, unless the context indicates that a reference to previous Regulation Z is also intended.

(c)] Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

►4. [5]. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 226.18(b) are further divided by subparagraph, such as comment 18(b)(1)–1 and comment 18(b)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 18–1 or comment 18(b)–1. This introduction may be cited as comments I–1 through ►I–4◄ [I–7]. Comments to the appendixes may be cited, for example, as comment app. A–1.

[6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) ''Statute''—those sections of the Truth in Lending Act on which the regulatory provision is based (and any other relevant statutes); (b) ''Other sections''—other provisions in the regulation necessary to understand that section; (c) ''Previous regulation''—parallel provisions in previous Regulation Z; and (d) ''1981 changes''—a brief description of the major changes made by the 1981 revisions to Regulation Z. Where appropriate, a fifth category (''Other regulations'') provides cross-references to other regulations.

7. *Transition rules.* (a) Though compliance with the revised regulation is not mandatory until April 1, 1982, creditors may begin complying as of April 1, 1981. During the intervening year, a creditor may convert its entire operation to the new requirements at one time, or it may convert to the new requirements in stages. In general, however, a creditor may not mix the regulatory requirements when making disclosures for a particular closed-end transaction or open-end account; all the disclosures for a single closed-end transaction (or open-end account) must be made in accordance with the previous regulation, or all the disclosures must be made in accordance with the revised regulation. As an exception to the general rule, the revised rescission rules and the revised advertising rules may be followed even if the disclosures are based on the previous regulation. For purposes of this regulation, the creditor is not required to take any particular action beyond the requirements of the revised regulation to indicate its conversion to the revised regulation.

(b) The revised regulation may be relied on to determine if any disclosures are required for a particular transaction or to determine if a person is a ''creditor'' subject to Truth in Lending requirements, whether or not other operations have been converted to the revised regulation. For example, layaway plans are not subject to the revised regulation, nor are oral agreements to lend money if there is no finance charge. These provisions may be relied on even if the creditor is making other disclosures under the previous regulation. The new rules governing whether or not disclosures must be made for refinancings and assumptions are also available to a creditor that has not yet converted its operations to the revised regulation.

(c) In addition to the above rules, applicable to both open-end and closed-end credit, the following guidelines are relevant to open-end credit:

- The creditor need not remake initial disclosures that were made under the previous regulation, even if the revised periodic statements contain terminology that is inconsistent with those initial disclosures.
- A creditor may add inserts to its old open-end forms in order to convert them to the revised rules until such time as the old forms are used up.
- No change-in-terms notice is required for changes resulting from the conversion to the revised regulation.
- The previous billing rights statements are substantially similar to the revised billing rights statements and may continue to be used, except that, if the creditor has an automatic debit program, it must use the revised automatic debit provision.
- For those creditors wishing to use the annual billing rights statement, the creditor may count from the date on which it sent its last statement under the previous regulation in determining when to give the first statement under the new regulation. For example, if the creditor sent a semiannual statement in June 1981 and converts to the new regulation in October 1981, the creditor must give the billing rights statement sometime in 1982, and it must not be fewer than 6 nor more than 18 months after the June statement.
- Section 226.11 of the revised regulation affects only credit balances that are created on or after the date the creditor converts the account to the revised regulation.]

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. ►For example, if a U.S. resident has a credit card account issued by a bank (whether U.S.- or foreign-based) located in the consumer's state, the account is covered by the regulation, including extensions of credit under the account that occur outside the United States. In contrast, if a U.S. resident residing or visiting abroad, or a foreign national abroad, opens a credit card

account issued by a foreign branch of a U.S. bank, the account is not covered by the regulation.◄ [Thus, a U.S. resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.]

Section 226.2—Definitions and Rules of Construction

2(a)(2) Advertisement.

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. ►Electronic advertisements◄ [On-line messages], such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point-of-sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers ►or potential customers◄ as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does not include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market-research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account.)

2. *Persons covered.* All *persons* must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

2(a)(4) Billing cycle or cycle.

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term *cycle* is interchangeable with *billing cycle* for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than four days from a fixed ''day'' (for example, the third Thursday of each month) or ''date'' (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the ►first billing cycle on an open-end account or to a◄ transitional billing cycle that can occur ►if◄ [when] the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See comments 9(c)(1)–3 and 9(c)(2)–3[the commentary to § 226.9(c)].)

4. *Payment reminder.* The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

2(a)(6) Business day.

1. *Business function test.* Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rescission rule.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission or mortgages subject to § 226.32 are involved. (See also comment 31(c)(1)–1.) Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). The observed holiday (in the example, July 3) is a business day for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by § 226.32.

2(a)(7) Card issuer.

1. *Agent.* An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

2(a)(8) Cardholder.

1. *General rule.* A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor

does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation.* For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance.* See the commentary to § 226.12(a).

4. *Dual-purpose cards and dual-card systems.* Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

2(a)(9) Cash price.

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under § 226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under § 226.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. See the commentary to § 226.18(b).

2(a)(10) Closed-end credit.

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.

2(a)(11) Consumer.

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under § 226.15 and § 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

2(a)(12) Consumer credit.

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. See, however, the discussion of business purposes in the commentary to § 226.3(a).

2(a)(13) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

2(a)(14) Credit.

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments

v. *Borrowing* against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a

transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ''payday loan'' or ''payday advance'' or ''deferred-presentment loan.'' A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See § 226.2(a)(17).

2(a)(15) Credit card.

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term *charge card* is, however, distinguished from *credit card* in §§ 226.5a, ►226.7(b)(11), 226.7(b)(12)◄ 226.9(e), 226.9(f) and 226.28(d), and appendixes G–10 through G–13. When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.

2(a)(16) Credit sale.

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under § 226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. See the commentary to § 226.17(d).

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of § 226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders *sell* a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. See the commentary to § 226.17(c)(1) for further discussion of this point.

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

2(a)(17) Creditor.

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Paragraph 2(a)(17)(i).

1. *Prerequisites.* This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in ►§ 226.2(a)(17)(v)◄ [footnote 3 to § 226.2(a)(17)].

i. *First,* there must be either or both of the following:

A. A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

B. A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

ii. *Second,* the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to *bearer*, the creditor is the one who initially accepts the obligation.

2. *Assignees.* If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

i. An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests.* The examples below illustrate how the numerical tests of ►§ 226.2(a)(17)(v)◄ [footnote 3] are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in ►2006◄ [1982].

4. *Counting transactions.* For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, *transactions* means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in ►2007◄ [1983], it is a creditor for purposes of the regulation for the last extension of credit in ►2007◄ [1983] and for all extensions of consumer credit in ►2008◄ [1984]. On the other hand, if a business begins in ►2007◄ [1983] and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in ►2007◄ [1983]. If it extends consumer credit 75 times in ►2008◄ [1984], however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in ►2009◄ [1985].

5. *Relationship between consumer credit in general and credit secured by a dwelling.* Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in ►2007◄ [1983] a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are not counted towards the number of credit extensions secured by a dwelling. For example, if in ►2007◄ [1983] a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test.* Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in ►2007◄ [1983] a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts.* In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

i. A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

[8. *Loans from employee savings plans.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances, and use a trust to administer the receipt and disbursement of funds. Unless each participant's account is an individual plan and trust, the creditor should apply the numerical tests to the plan as a whole rather than to the individual account, even if the loan amount is determined by reference to the balance in the individual account and the repayments are credited to the individual account. The person to whom the obligation is originally made payable (whether the plan, the trust, or the trustee) is the creditor for purposes of the act and regulation.]

Paragraph 2(a)(17)(ii). [Reserved]

Paragraph 2(a)(17)(iii).

1. *Card issuers subject to Subpart B.* Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

Paragraph 2(a)(17)(iv).

1. *Card issuers subject to Subparts B and C.* Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

2(a)(18) Downpayment.

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to § 226.2(a)(23).)

2. *Pick-up payments.* i. Creditors may treat the deferred portion of the downpayment, often referred to as *pick-up payments*, in a number of ways. If the pick-up payment is treated as part of the downpayment:

A. It is subtracted in arriving at the amount financed under § 226.18(b).

B. It may, but need not, be reflected in the payment schedule under § 226.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.

B. It must be shown in the payment schedule. iii. Whichever way the pick-up payment is treated, the total of payments under § 226.18(h) must equal the sum of the payments disclosed under § 226.18(g).

3. *Effect of existing liens.*

i. *No cash payment.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not −$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under § 226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

2(a)(19) Dwelling.

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer.

See the commentary to §§ 226.2(a)(24), 226.15, and 226.23.

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) for credit extensions over $25,000.

2(a)(20) Open-end credit.

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. ►The consumer has a single account with the creditor, although there may be separate sub-accounts maintained under that single account. Advances and payments may be allocated to different sub-accounts for the purpose of prescribing different terms (such as different periodic rates or other payment options) for those advances. Repayments of an advance for any sub-account must generally replenish the credit line for that sub-account so that a consumer may continue to borrow and take advances under the plan to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance. For example, a credit card account may permit cash advances and purchase transactions with different periodic rates and payment terms. Repayments allocated to the cash advance sub-accounts must generally replenish the consumer's cash advance credit line and repayment allocated to the purchase transaction sub-account must generally replenish the consumer's purchase transaction credit line, so that the consumer may continue to take advances under each sub-account to the extent that its outstanding balance is repaid.◄ [Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multi-featured plan.]

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. [For example: i. It] ►For example, it◄ would be more reasonable for a ►bank or depository institution◄ [thrift institution chartered for the benefit of its members] to contemplate repeated transactions with a [member] ►customer◄ than for a seller of aluminum siding to make the same assumption about its customers.

[ii. It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.]

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, [such as certain *china club* plans,] a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may ►occasionally or routinely◄ verify credit information such as the consumer's continued income and employment status or information for security purposes ►but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances.◄. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in [the economy,] the creditor's financial condition[,] or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

2(a)(21) Periodic rate.

1. *Basis.* The periodic rate may be stated as a percentage (for example, 1 ½ percent per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

i. May disclose a 1/360 rate as a *daily* periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.

ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within ⅛ of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges. Periodic rate* does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

2(a)(22) Person.

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this regulation.

2(a)(23) Prepaid finance charge.

1. *General.* Prepaid finance charges must be taken into account under § 226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under § 226.18(c).

2. *Examples.* i. Common examples of prepaid finance charges include:

A. Buyer's points.
B. Service fees.
C. Loan fees.
D. Finder's fees.
E. Loan-guarantee insurance.
F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions. Add-on* and *discount* finance charges are not prepaid finance charges for purposes of this regulation. Finance charges are not *prepaid* merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. See the commentary to § 226.18(b).

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under § 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to §§ 226.4(b)(9) and 226.4(c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

2(a)(24) Residential mortgage transaction.

1. *Relation to other sections.* This term is important in ►seven◄ [six] provisions in the regulation:

i. Section 226.4(c)(7)—exclusions from the finance charge.
ii. Section 226.15(f)—exemption from the right of rescission.
iii. Section 226.18(q)—whether or not the obligation is assumable.
iv. Section 226.19—special timing rules.
v. Section 226.20(b)—disclosure requirements for assumptions.
vi. Section 226.23(f)—exemption from the right of rescission.
►vii. Section 226.32(a)—exemption from rules for certain mortgages.◄

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a *residential mortgage transaction* if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can have only *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. See the commentary to §§ 226.15(a) and 226.23(a).

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under § 226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal

dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) or § 226.19(a) (assumability policies and early disclosures for residential mortgage transactions). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).

6. *Multiple purpose transactions.* A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

2(a)(25) Security interest.

1. *Threshold test.* The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to § 226.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. *Incidental interests.* i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an *incidental interest* does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is ''acquired'' or an existing security interest is ''retained'' in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: ''Your home is the security for the new transaction.''

2(b) Rules of construction.

1. *Footnotes.* Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

Section 226.3—Exempt Transactions

►1. *Relationship to § 226.12.* The provisions in § 226.12(a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.◄

3(a) Business, commercial, agricultural, or organizational credit.

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt.

►2. *Business purpose purchases.*

i. *Business-purpose credit cards—extensions of credit for consumer purposes.* If a business-purpose credit card is issued to a person, other than as provided in §§ 226.12(a) and 226.12(b), the provisions of the regulation do not apply, even if extensions of credit for consumer purposes are made using that business-purpose credit card. For example, the billing error provisions set forth in § 226.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card or a business-purpose open-end credit plan.

ii. *Consumer-purpose credit cards—extensions of credit for business purposes.* If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card or a consumer-purpose open-end credit plan, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.◄

[2]►3◄. *Factors.* In determining whether credit to finance an acquisition such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

►i. *General*◄

A. The relationship of the borrower s primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

E. The borrower's statement of purpose for the loan.

►ii. *Business-purpose examples.*◄ Examples of business-purpose credit include:

A. A loan to expand a business, even if it is secured by the borrower s residence or personal property.

B. A loan to improve a principal residence by putting in a business office.

C. A business account used occasionally for consumer purposes.

► iii. *Consumer-purpose examples.*◄ Examples of consumer-purpose credit include:

A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

B. A loan secured by a mechanic's tools to pay a child's tuition.

C. A personal account used occasionally for business purposes.

[3] ►4◄. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. *See* Comment 3(a)–[4] ►5◄, however, for rules relating to owner-occupied rental property.

[4] ►5◄. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in Comment 3(a)–''►3◄ [2].

[5] ►6◄. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

►7. *Credit card renewal.* A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.◄

[6] ►8◄. *Agricultural purpose.* An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

[7] ►9◄. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

[8] ►10◄. *Land trusts.* Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household

purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

3(b) Credit over $25,000 not secured by real property or a dwelling.

1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. *Open-end credit.* i. An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances ►(except as permitted from time to time pursuant to § 226.2(a)(20))◄.

B. The initial extension of credit on the line exceeds $25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (*See* the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (*See* the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

3(c) Public utility credit.

1. *Examples.* Examples of public utility services include:

i. *General.*

A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

►ii. *Extensions of credit not covered.*◄ The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

3(d) Securities or commodities accounts.

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

3(e) Home fuel budget plans.

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

3(f) Student loan programs.

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

Section 226.4—Finance Charge

4(a) Definition.

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

i. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

iii. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

iv. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. ►*Treatment of transaction fees on credit card plans.* Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. Similarly, any charge imposed on a credit cardholder by a card issuer for making a purchase outside the United States or in a foreign currency is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for such transactions.◄ [*Treatment of fees for use of automated teller machines.* Any charge imposed on a cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. (See the commentary to § 226.6(b).)]

5. *Taxes.*

i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly; or

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

4(a)(1) Charges by third parties.

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

4(a)(3) Special rule; mortgage broker fees.

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a

consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example:

i. Premiums for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met.

ii Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).

Paragraph 4(b)(2).

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

Paragraph 4(b)(3).

1. *Assumption fees.* The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

Paragraphs 4(b)(7) and (8).

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b)(7) and (8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not ''written in connection with'' the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Insurance sold after consummation in closed-end credit transactions or after the opening of a ►home equity plan subject to the requirements of § 226.5b◄ [plan in open-end credit transactions] is not ''written in connection with'' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a ►home equity◄ plan ►subject to the requirements of § 226.5b◄ (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed). ►Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.''◄

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in § 226.4(b)(7) and (8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.*

i. ►Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan.◄ [Discounts offered to induce consumers to pay for property or services by cash, check, or other means not involving the use of either an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card) may be excluded from the finance charge under section 167(b) of the Act (as amended by Pub. L. 97–25, July 27, 1981).] The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. ►Pursuant to section 167(b) of the Act, this◄ [This] provision applies only to transactions involving an open-end credit plan or a credit card ►(whether open-end or closed-end credit is extended on the card)◄. The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. ►Pursuant to section◄ [Section] 171(c) of the act, [excludes section 167(b)] discounts ►excluded from the finance charge under this paragraph are also excluded◄ from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.*

i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge*, as these terms are defined in amended section 103 of the Act. The *regular price* is defined in section 103 of the Act as—

* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *.

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(b)(10) Debt cancellation ►and debt suspension◄ fees.

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term ►''debt cancellation coverage''◄ includes guaranteed automobile protection, or ''GAP,'' agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. ►Debt suspension coverage provides for suspension of the obligation to make one or more payment on the date(s) otherwise required by the credit agreement, when a specified even occurs. The term ''debt suspension'' does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment (''skip payments''), or the bank's unilateral decision to allow a deferral of payment.◄

►2. *Coverage written in connection with a transaction.* Coverage sold after consummation in closed-end credit transactions or after the opening of a home equity plan subject to the requirements of § 226.5b is not written in connection with the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.''◄

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. *Late-payment charges.*

i. Late-payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late-payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for ''delinquency, default, or a similar occurrence'' include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. *Participation fees—periodic basis.* The participation fees mentioned in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment ►14(c)–2◄ [14(c)–7] for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5).

1. *Seller's points.* The seller's points mentioned in § 226.4(c)(5) include any

charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6).

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such ''lost interest'' need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation ►or debt suspension◄ coverage.

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt cancellation ►and debt suspension◄ charges to be excluded from the finance charge. The required disclosures must be made in writing►, except as provided in § 226.4(d)(4)◄. The rules on location of insurance and debt cancellation ►and debt suspension◄ disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation ►and debt suspension◄ coverage unless the context indicates otherwise.

2. *Timing of disclosures.* If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.*

i. *Open-end credit.* The premium or fee for insurance or debt cancellation ►or debt suspension◄ for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance ►; debt cancellation or suspension coverage◄.* Credit life, accident, health, or loss-of-income insurance►, and debt cancellation and suspension coverage described in § 226.4(b)(10),◄ must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance ►or coverage◄ is in fact required or optional is a factual question. If the insurance ►or coverage◄ is required, the premiums must be included in the finance charge, whether the insurance ►or coverage◄ is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an

existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(c) ►(1)◄ or § 226.18(m). See the commentary to § 226.4(b)(7) and (8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not ►imposed◄ [required] by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures.* If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single-interest insurance.* Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term.*

i. The initial term of insurance or debt cancellation ►or debt suspension◄ coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.*

i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation ►or debt suspension◄ coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

4(d)(3) Voluntary debt cancellation ►or debt suspension◄ fees.

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (''GAP'') agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation ►or debt suspension◄ coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation ►or debt suspension◄ coverage constitutes insurance under state law. ►See Model Clauses and Samples at G–16 and H–17 in appendix G and appendix H for guidance on how to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.◄

►3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.◄

►*4(d)(4) Telephone purchases.*

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request

if the ''request'' was a response to a script that uses leading questions or negative consent.◄

4(e) Certain security interest charges.

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in § 226.4(e)(1) and (3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Nonfiling insurance.* The exclusion in § 226.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of ''self-insurance'' against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for nonfiling insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

[Paragraph] 5(a)(1) ►*—General.*◄

1. *Clear and conspicuous standard.* The ''clear and conspicuous'' standard ►generally◄ requires that disclosures be in a reasonably understandable form. ►Disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4), highlighted disclosure on checks that access a credit card under § 226.9(b)(3); highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under § 226.9(g)(3)(ii) must also be readily noticeable to the consumer.◄ [Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comment 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (''finance charge'' and ''annual percentage rate'')
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations
- Sending promotional material with the required disclosures
- Using commonly accepted or readily understandable abbreviations (such as ''mo.'' for ''month'' or ''Tx.'' for ''Texas'') in making any required disclosures
- Using codes or symbols such as ''APR'' (for annual percentage rate), ''FC'' (for finance charge), or ''Cr'' (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.]

►2. *Clear and conspicuous—reasonably understandable form.* Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. *See* comment 5(b)(1)(ii)-1. Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology (''finance charge'' and ''annual percentage rate'')

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations

iii. Sending promotional material with the required disclosures

iv. Using commonly accepted or readily understandable abbreviations (such as ''mo.'' for ''month'' or ''Tx.'' for ''Texas'') in making any required disclosures

v. Using codes or symbols such as ''APR'' (for annual percentage rate), ''FC'' (for finance charge), or ''Cr'' (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.◄

►3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§ 226.5a(b)(1) and 226.6(b)(4).)◄

►4.◄ [2.] *Integrated document.* The creditor may make both the ►account-opening◄ [initial] disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, ►except where otherwise indicated,◄ so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features

►5. *Disclosures covered.* Disclosures that must meet the ''clear and conspicuous'' standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.◄

[Paragraph] 5(a)(2) ►—*Terminology*◄.

1. *When disclosures must be more conspicuous.* The terms *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in ►§ 226.5(a)(2)(ii)◄ [footnote 9]. At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by [§ 226.6(a)(2)] ►§ 226.6(a)(1)(ii)◄, the term *annual percentage rate* is subject to the *more conspicuous* rule.

ii. In disclosing the amount of the finance charge, required by ►§ 226.7(a)(6)(i)◄ [§ 226.7(f)], the term *finance charge* is subject to the *more conspicuous* rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under [§ 226.6(a)(3) and (4)] ►§ 226.6(a)(1)(iii) and (iv)◄, they may be equally conspicuous as the disclosures required under §§ [226.6(a)(2) and 226.7(g)] ►226.6(a)(1)(ii) and 226.7(a)(7)◄.

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* The terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

►4. *Consistent terminology.* Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.◄

5(b) Time of disclosures.

5(b)(1) [Initial] ►*Account-opening*◄ *disclosures.*

►*5(b)(1)(i) General rule.*◄

1. *Disclosure before the first transaction.* ►When disclosures must be furnished ''before the first transaction,'' the disclosures must be delivered before the consumer becomes obligated on the plan.◄ [The rule that the initial disclosure statement must be furnished ''before the first transaction'' requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan.] For example, the [initial] ►account-opening◄ disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store) ►except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to paragraph 5(b)(1)(iii) below);◄ receives the first advance ►;◄ [,] or pays any fees or charges under the plan other than an application fee or refundable membership fee [(see below)]. The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.

[If the consumer pays a membership fee before receiving the Truth in Lending account-opening disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.

If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

Account-opening disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).]

i. If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section. ►If the only ''use'' of the account is the creditor's assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment.◄

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new [initial] ►account-opening◄ disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new [initial] ►account-opening◄ disclosures are required. No new [initial] ►account-opening◄ disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the ''new'' account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, [initial] ►account-opening◄ disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must ►furnish the disclosures required by § 226.6 so that the consumer has an opportunity, after reviewing the disclosures, to contact the creditor before the balance is transferred and decline the transfer.◄ [comply with

§ 226.6 before the balance transfer occurs.] ►For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the card issuer would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the card issuer and withdraw the request.◄ Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement.

►*5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.*

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(4)(ii). Creditors meet the standard to provide disclosures at a relevant time if the oral or written disclosure of such a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call.◄

►*5(b)(1)(iii) Telephone purchases.*

1. *Return policies.* Creditors that choose to provide disclosures in accordance with the timing requirements of this paragraph must maintain a return policy that provides for the return of merchandise purchased at the time the plan was established without mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Creditors, policies regarding the return of merchandise need not provide a right to return goods if the consumer consumes or damages the goods.◄

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. *Termination of* ►*draw*◄ *[credit] privileges.* When ►a consumer's ability to draw on◄ an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i)[(]►, for example, when ►the draw period of◄ an open-end credit plan ends and consumers are paying off outstanding balances ►according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. ◄[) and]► In addition, creditors must◄ continue to follow all of the other open-end credit requirements and procedures in subpart B.

►3. *Instituting collection proceedings.* Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.◄

Paragraph 5(b)(2)(ii).

1. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

i. If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

ii. If charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit).

[2. *Computer malfunction.* Footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction.]

►*Paragraph 5(b)(2)(iii).*◄

►1.◄ [2.] *Computer malfunction.* The exceptions identified in paragraph 5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

►2.◄ [3.]. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. [If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer-consent requirements in section 226.36(b).]

5(c) Basis of disclosures and use of estimates.

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures,

redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

[4. *Deferred-payment transactions.* See comment 7–3(iv).]

5(d) Multiple creditors; multiple consumers.

1. *Multiple creditors.* Under § 226.5(d):

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

►3. *Card issuer and person extending credit not the same person.* Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.◄

5(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

Section 226.5a—Credit and Charge Card Applications and Solicitations

1. *General.* Section 226.5a generally requires that credit disclosures be contained in application forms and [preapproved] solicitations initiated by a card issuer to open a credit or charge card account. (See [the commentary to] § 226.5a(a) ►(5)◄ [(3)] and (e) ►(2)◄ for exceptions; see ►§ 226.5a(a)(1) and accompanying commentary for the definition of solicitation;◄ see also § 226.2(a)(15) and accompanying commentary for the definition of charge card.)

2. ►*Substitution of account-opening summary table for the disclosures required by § 226.5a.* In complying with § 226.5a(c), § 226.5a(d)(2), § 226.5a(e)(1) or § 226.5a(f), a card issuer may provide the account-opening summary table described in § 226.6(b)(4) in lieu of the disclosures required by § 226.5a, if the issuer provides the disclosures required by § 226.6 on or with the application or solicitation.◄ [*Combining disclosures.* The initial disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure statement meets the requirements of both sections. For example, if a card issuer in complying with § 226.5a(e)(2) provides all the applicable disclosures required under § 226.6, in a form that the consumer may keep and in accordance with the other format and timing requirements for that section, the issuer satisfies the initial disclosure requirements under § 226.6 as well as the disclosure requirements of § 226.5a(e)(2). Or if, in complying with § 226.5a(c) or § 226.5a(d)(2), a card issuer provides an integrated document that the consumer may keep, and provides the § 226.5a disclosures (in a tabular format) along with the additional disclosures required under § 226.6 (presented outside of the table), the card issuer satisfies the requirements of both §§ 226.5a and 226.6.]

►3. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.5a disclosures.◄

5a(a) General Rules.

►*5a(a)(1) Definition of Solicitation.*

1. *Invitations to apply.* A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of *solicitation*, nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or ''take one'', an oral application in a telephone contact initiated by the card issuer, or an application in an in-person contact initiated by the card issuer.◄

5a(a)(2) Form of Disclosures►; tabular format◄

[1. *Clear and conspicuous standard.* For purposes of § 226.5a disclosures, *clear and conspicuous* means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of § 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.]

[2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located.] ►1. *Location of table.* i. *General.* Except for disclosures given electronically, disclosures in § 226.5a(b) that are required to be provided in a table must be prominently located on or with the application or solicitation.◄ Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable. [Disclosures required by § 226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.]

ii. *Electronic disclosures.* [Electronic disclosures are deemed to be prominently located if:] ►If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Electronic disclosures are deemed to be closely proximate to an application or solicitation if:

(A) They automatically appear on the screen when the application or reply form appears;

(B) They are located on the same Web ''page'' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; or

(C) ◄[A.] They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form ►.◄[; or]

[B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable.]

►2.◄ [3.] *Multiple accounts or varying terms.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account. Similarly, if rates or other terms vary from state to state, card issuers may list the states and the various disclosures in a single table or in separate tables.

►3. *Information permitted in the table.* See the commentary to § 226.5a(b), (d)(2)(ii) and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the heading *Transaction fee for purchases* and a disclosure showing *none*, or the heading and disclosure may be deleted from the table. There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.* See Samples G–10(B) and G–10(C) for guidance on providing the disclosures described in § 226.5a(a)(2)(vi) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the rates and fees described in § 226.5a(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically on the table.

6. *Form of disclosures.* If a consumer accesses an application or solicitation in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application or solicitation; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation. For example, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located.

7. *Terminology.* Section 226.5a(a)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in G–10; but see § 226.5(a)(2) for terminology requirements applicable to § 226.5a disclosures.

8. *Form of electronic disclosures provided on or with electronic applications or solicitations.* Card issuers must provide the disclosures required by this section on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet Web site. Card issuers have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application or reply form appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. For disclosures required to be provided in tabular form, card issuers must satisfy the requirements with respect to electronic disclosures set forth in comment 5a(a)(2)–1(ii).◄

[4. *Additional information.* The table containing the disclosures required by § 226.5a should contain only the information required or permitted by this section. (See the commentary to § 226.5a(b) for guidance on information permitted in the table.) Other credit information may be presented on or with an application or solicitation, provided such information appears outside the required table.

5. *Location of certain disclosures.* A card issuer has the option of disclosing any of the fees in § 226.5a(b)(8) through (10) in the required table or outside the table.

6. *Terminology.* In general, § 226.5a(a)(2)(iv) requires that the terminology used for the disclosures specified in § 226.5a(b) be consistent with that used in the disclosures under §§ 226.6 and 226.7. This standard requires that the § 226.5a(b) disclosures be close in meaning to those under §§ 226.6 and 226.7; however, the terminology used need not be identical. In addition, § 226.5a(a)(2)(i) requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G. A special rule applies to the grace period disclosure, however: the term *grace period* must be used, either in the heading or in the text of the disclosure.

7. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, delete inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the heading *Transaction fee for purchases* and a box showing *none*, or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: even if no grace period exists, that fact must be stated.

8. *Timing of disclosures for electronic applications or solicitations.* In all cases, a consumer must be able to access the disclosures at the time the blank application or reply form is made available by electronic communication, such as on a card issuer's Internet Web site. Card issuers have flexibility in satisfying this requirement. For

example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.]

[5a(a)(3) Exceptions.

1. *Coverage.* Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:

- Lines of credit accessed solely by account numbers
- Addition of a credit or charge card to an existing open-end plan

2. *Consumer initiated requests not covered.* Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d).

3. *General purpose applications.* The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.]

►*[5a(a)(5)]* ►*5a(a)(4)*◄ *Certain Fees that Vary by State.*

1. *Manner of disclosing range.* If the card issuer discloses a range of fees instead of disclosing the amount of the fee imposed in each state, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

►*5a(a)(5) Exceptions.*

1. *Noncoverage of consumer-initiated requests.* Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to § 226.5a, specifically § 226.5a(f).◄

5a(b) Required Disclosures.

►*1. Tabular format.* Provisions in § 226.5a(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for § 226.5a(b) disclosures given pursuant to paragraphs (c), (d)(2), (e)(1) and (f) of this section. The tabular format does not apply to oral disclosures given pursuant to paragraph (d)(1) of this section. See § 226.5a(a)(2).

2. *Accuracy.* Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c), (d), and (e), as applicable.◄

5a(b)(1) Annual Percentage Rate.

[1. *Periodic rate.* The periodic rate, expressed as such, may be disclosed in the table in addition to the required disclosure of the corresponding annual percentage rate.]

[2.] ►1.◄ *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(2) for examples of variable-rate plans.)

►2. *Variable-rate accounts—fact that rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. The issuer shall not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. See Samples G–10(B) and G–10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.

3. *Discounted initial rates.* If the term "introductory" is in the same phrase as the discounted initial annual percentage rate, it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase "introductory balance transfer rate X percent" has used the word "introductory" within the same phrase as the rate. See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the discounted initial rate and the rate that will apply after the discounted initial rate expires, if an initial discounted rate is disclosed in the table.◄

[7.] ►4.◄ *Increased penalty rates.* ►This paragraph applies if any rate, including a discounted initial rate, could be increased because of one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate if the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." See Samples G–10(B) and G–10(C) for additional guidance on the level of detail in which the specific event or events should be described. The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. See Samples G–10(B) and G–10(C) for additional guidance on the level of detail in which the issuer should use to describe how long the increased rate will remain in effect. A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv) if the issuer uses the format shown in Samples G–10(B) and G–10(C) to disclose this information.◀ [If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as ''applies to accounts 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.]

▶5. *Rate depends on consumer's creditworthiness.* The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). See Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.

6. *Cross-reference between rates and fees.* If a rate and fee both apply to a balance transfer or cash advance transaction, the card issuer must disclose that a fee also applies when disclosing the rate, and a cross-reference to the fee. See Sample G–10(B) and G–10(C) for guidance on how to provide these disclosures.◀

[3. *Variable-rate accounts—rates in effect.* For variable-rate disclosures in direct mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures in telephone applications and solicitations subject to § 226.5a(d), the card issuer must provide an annual percentage rate currently applicable when oral disclosures are provided under § 226.5a(d)(1). For the alternate disclosures under § 226.5a(d)(2), the card issuer must provide the annual percentage rate in effect at the time the disclosures are mailed or delivered. A rate in effect also includes the rate as of a specified date (which rate is then updated from time to time, for example, each calendar month) or an estimated rate provided in accordance with § 226.5(c).

4. *Variable-rate accounts—other disclosures.* In describing how the applicable rate will be determined, the card issuer must identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table.

5. *Introductory rates—discounted rates.* If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account in accordance with the rules in § 226.5a(b)(1)(ii) and comment 5a(b)(1)–3. An initial discounted rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.]

5a(b)(2) Fees for Issuance or Availability.

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee [need] ▶shall◀ not be disclosed ▶in the table◀ if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) [should] ▶shall◀ not be disclosed in the table if the basic account may be opened without paying such fees.

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership ▶or participation◀ fees. The following are examples of fees that [should] ▶shall◀ not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

[• Application fees described in § 226.4(c)(1)]

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the fees or waivers will remain in effect.

5. ▶*Periodic fees and one-time fees.* A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. See Sample G–10(B) for guidance on how to meet these requirements.◀ [*Fees stated as annual amount.* Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to § 226.9(e) with regard to disclosure of such fees in renewal notices.)]

▶*5a(b)(3) Minimum Finance Charge.*

1. *Example of brief statement.* See Samples G–10(B) and G–10(C) for guidance on how to provide a brief description of a minimum interest charge.◀

5a(b)(4) Transaction Charges.

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, [would] ▶shall◀ not be disclosed ▶in

the table◄ under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

5a(b)(5) Grace Period.

1. *How disclosure is made.* ►The card issuer must state any conditions on the applicability of the grace period. An issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet these requirements by providing the following disclosure: ''If you pay your entire balance in full each month, you have [at least] ____ days after the close of each period to pay your balance on purchases without being charged interest.''◄ [The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).'']

5a(b)(6) Balance Computation Method.

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must [only] disclose ►below the table◄ only the name of the method [in the table]. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under [§ 226.6(a)(3)] ►§ 226.6(b)(2)(i)(D)◄. (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining the appropriate balance computation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases or covers two billing cycles, respectively. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) Statement on Charge Card Payments.

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, ''Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement.''

5a(b)(8) Cash Advance Fee.

1. ►*Content.* See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.◄ [*Applicability.* The card issuer must disclose only those fees it imposes for a cash advance that are finance charges under § 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no similar charge is imposed for ATM transactions not involving an extension of credit. (See comment 4(a)–5 for a description of such a fee.)]

5a(b)(9) Late Payment Fee.

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late payment fees.) ►See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.◄

5a(b)(10) Over-the-Limit Fee.

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. ►See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.◄

►*5a(b)(13) Cross References from Fees to Penalty Rates.*

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on how to provide the disclosure in § 226.5a(b)(13).◄

►*5a(b)(14) Required Insurance or Debt Cancellation or Suspension Plans.*

1. *Content.* See Sample G–10(B) for guidance on how to comply with the requirements in § 226.5a(b)(14).◄

►*5a(b)(15) Payment Allocation.*

1. *Examples.* i. The following are examples of situations where these disclosures would apply (assuming there is a grace period that applies to purchases, and consumers may transfer balances as part of accepting the offer):

A. A card issuer offers a discounted initial rate on balance transfers that is lower than the rate that applies for purchases.

B. A card issuer offers the same discounted initial rate on balance transfers and purchases for a specified period of time, but the discounted initial rate on balance transfers (and not the discounted initial rate for purchases) may be extended until the balance transfer is paid off in certain circumstances (e.g., if the consumer makes two purchases each billing cycle).

ii. The following is an example of a situation where these disclosures do not apply (assuming there is a grace period that applies to purchases): A card issuer offers a discounted initial rate on balance transfers that is lower than the rate that applies for purchases, but this discounted initial rate does not apply to balance transfers that can be initiated with the offer and only applies to subsequent balance transfers.

2. *Content.* See Samples G–10(B) or G–10(C) for guidance on how to meet the requirements set forth in § 226.5a(b)(15).◄

►*5a(b)(16) Available Credit.*

1. *Calculating available credit.* If the 25 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed when the account is opened and charged to the account, such as one-time issuance and set-up fees that will be imposed when the card is opened. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement.

2. *Content.* See Sample G–10(B) for guidance on how to provide the disclosure required by § 226.5a(b)(16) clearly and conspicuously.◄

►*5a(b)(17) Reference to Web Site for Additional Information.*

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on disclosing a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.◄

5a(c) Direct Mail ►and Electronic◄ Applications and Solicitations.

[1. *Accuracy.* In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)]

[2.] ►1.◄ *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to *take-ones* in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a *take-one* (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a *take-one*—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the § 226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

5a(d) Telephone Applications and Solicitations.

1. *Coverage.* i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *prescreened* telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

►2. *Form of disclosures.* The disclosure specified in § 226.5a(d)(2)(ii) may appear either in or outside the table containing the required credit disclosures.◄

5a(e) Applications and Solicitations Made Available to General Public.

1. *Coverage.* Applications and solicitations made available to the general public include what are commonly referred to as *take-one* applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

[2. *Cross-selling.* If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to § 226.5a(e). For example, the following are not covered:

i. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation.

ii. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively.]

►2. *In-person applications and solicitations.* In-person applications and solicitations initiated by a card issuer are subject to § 226.5a(f), not § 226.5a(e). See § 226.5a(f) and accompanying commentary for rules relating to in-person applications and solicitations.◄

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

5a(e)(1) Disclosure of Required Credit Information.

1. *Date of printing.* Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in § 226.5a(e)(1)(ii) and (iii) may appear either in or outside the table containing the required credit disclosures.

[5a(e)(2) Inclusion of Certain Initial Disclosures.

1. *Accuracy of disclosures.* The disclosures required by § 226.5a(e)(2) generally must be current as of the time they are made available to the public. Disclosures are considered to be made available at the time they are placed in public locations (in the case of *take-ones*) or mailed to consumers (in the case of publications).

2. *Accuracy—exception.* If a card issuer discloses all the information required by § 226.5a(e)(1)(ii) on the application or solicitation, the disclosures under § 226.5a(e)(2) need only be current as of the date of printing. (A current variable annual percentage rate would be one in effect within 30 days before printing.)]

[5a(e)(3)] ►5a(e)(2)◄ No Disclosure of Credit Information.

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by § 226.5a(b). Statements such as *no annual fee, low interest rate, favorable rates,* and *low costs* are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

[5a(e)(4)] ►5a(e)(3)◄ Prompt Response to Requests for Information.

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e) (1) [or (2)] and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in

accordance with the option in § 226.5a(e) ►(2)◄ [(3)] and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer ►must◄ [may] provide the information listed in either § 226.5a(e)(1) [or (2)]. Information provided in writing need not be in a tabular format.

►*5a(f) In-person applications and solicitations.*

1. *Coverage.* i. This paragraph applies if:

A. An in-person conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *preapproved* in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

1. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

2. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. This paragraph does not apply to:

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.◄

[5a(f) Special Charge Card Rule—Card Issuer and Person Extending Credit Not the Same Person.

1. *Duties of charge card issuer.* Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in § 226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.

2. *Duties of creditor maintaining open-end plan.* Section 226.5a does not impose disclosure requirements on the creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer. (See comment 2(a)(7)–1.)

3. *Form of disclosures.* The disclosures required by § 226.5a(f) may appear either in or outside the table containing the required credit disclosures in circumstances where a tabular format is required.]

5a(g) Balance Computation Methods Defined

1. *Daily balance method.* Card issuers using the daily balance method may disclose it using the name *average daily balance (including new purchases)* or *average daily balance (excluding new purchases),* as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)–5 for a discussion of the daily balance method.)

2. *Two-cycle average daily balance methods.* The *two-cycle average daily balance* methods described in § 226.5a(g)(2)(i) and (ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge. Such methods also include those in which a periodic rate is applied separately to the balance in each cycle, and the resulting finance charges are added together. The method is a *two-cycle average daily balance* even if the finance charge is based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a *two-cycle average daily balance method* if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name *two-cycle average daily balance (excluding new purchases)* should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured on an average daily balance of only new purchases during that prior cycle.

Section 226.6—►Account-opening Disclosures◄ [Initial Disclosure Statement]

[1. *Consistent terminology.* Language on the initial account-opening and periodic disclosure statements must be close enough in meaning to enable the consumer to relate the two sets of disclosures; however, the language need not be identical. For example, in making the disclosure under § 226.6(a)(3), the creditor may refer to the ''outstanding balance at the end of the billing cycle,'' while the disclosure for § 226.7(i) refers to the ''ending balance'' or ''new balance.''

2. *Separate initial disclosures permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate initial disclosure statements.]

6(a) ►Rules affecting home equity plans◄ [Finance charge].

►*6(a)(1) Finance charge.*◄

Paragraph ►6(a)(1)(i).◄

1. *When finance charges accrue.* [Creditors may provide a general explanation about finance charges beginning to run and need not disclose a specific date. For example, a disclosure] ►Creditors are not required to disclose a specific date when finance charges will begin to accrue. Creditors may provide a general explanation such as◄ that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account [would describe when finance charges begin to run].

2. *[Free-ride] ►Grace◄ periods.* In disclosing whether or not a ►grace◄ [free-ride] period exists, the creditor need not use ''free period'', ''free-ride'' period, ►grace period◄ or any other particular descriptive phrase or term. For example, a statement that ''the finance charge begins on the date the transaction is posted to your account'' adequately discloses that no free-ride period exists. In the same fashion, a statement that ''finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle'' indicates that a ►grace◄ [free-ride] period exists in the interim.

Paragraph ►6(a)(1)(ii)◄ [6(a)(2)].

1. *Range of balances.* The range of balances disclosure is inapplicable:

i. If only one periodic rate may be applied to the entire account balance.

ii. If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% ►monthly◄ periodic rate on purchase balances of $0–$500, ►and a 1% monthly periodic rate for balances above $500)◄ [while balances above $500 are subject to a 1% periodic rate)]. [Of course] ►In this example◄, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.*

►i. *Examples.*◄ This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures [(and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed)] for plans involving rate changes such as the following:

A. Rate changes that are tied to the rate the creditor pays on its ►six-month certificate of deposits◄ [six-month money market certificates].

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. [In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. (See the rule in § 226.5b(f)(1) applicable to home equity plans, however, which prohibits rate-reservation clauses.) Moreover, an] ►An◄ open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan. [(With regard to such employee preferential-rate plans, however, see comment 9(c)–1, which provides that if the specific change that would occur is disclosed on the initial disclosure statement, no notice of a change in terms need be given when the term later changes as disclosed.)]

3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the ►account-opening◄ [initial] disclosures (as is required by §►226.6(a)(1)(ii)◄ [§ 226.6(a)(2)]), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable-rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the ►account-opening◄ [initial] disclosures, the disclosures under ►§ 226.6(a)(1)(ii)◄ [footnote 12] also must be made.

5. *Variable-rate—plan index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable-rate plan—circumstances for increase.*

i. Circumstances under which the rate(s) may increase include, for example:

A. An increase in the Treasury bill rate.

B. An increase in the Federal Reserve discount rate.

ii. The creditor must disclose when the increase will take effect; for example:

A. ''An increase will take effect on the day that the Treasury bill rate increases,'' or

B. ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See § 226.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25 % annual percentage rate.''

ii. ''Not more than ½% increase in the annual percentage rate per year will occur.''

8. *Variable-rate plan—effects of increase.* Examples of effects ►of rate increases◄ that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

9. *Variable-rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment ►6(a)(1)(ii)–2◄ [6(a)(2)–2].

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the [initial] ►account-opening◄ disclosure statement should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long [it] ►the initial rate◄ will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required [by footnote 12 to] ►in § 226.6(a)(1)(ii)◄.

iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment ►6(a)(1)(ii)–3◄ [6(a)(2)–3].

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

Paragraph ►6(a)(1)(iii)◄ [6(a)(3)].

1. *Explanation of balance computation method.* A shorthand phrase such as previous balance method does not suffice in explaining the balance computation method. (See

►Model Clauses in◄ appendix G–1[for model clauses].)

2. *Allocation of payments.* ►Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.◄ [Disclosure about the allocation of payments and other credits is not required.] For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See comment 7–1 for definition of multifeatured plan.)

Paragraph ►6(a)(1)(iv)◄ [6(a)(4)].

1. *Finance charges.* In addition to disclosing the periodic rate(s) under [§ 226.6(a)(2),] ►§ 226.6(a)(1)(ii), creditors must disclose◄ [disclosure is required of] any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7).) ►Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.◄

►6(a)(2)◄ [6(b)] Other charges.

1. *General; examples of other charges.* Under ►§ 226.6(a)(2)◄ [§ 226.6(b)], significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with ►residential mortgage transactions or◄ real estate transactions such as title, appraisal, and credit-report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (see the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an ''other charge.''

[vi. Automated teller machine (ATM) charges described in comment 4(a)–4 that are not finance charges.]

►vi.◄ [vii.] Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not ''other charges'':

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (see commentary to § 226.4(c)(2).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(b)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

►6(a)(3)◄ [6(e)] Home equity plan information.

1. *Additional disclosures required.* For home equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)–1.)

2. *Form of disclosures.* The home equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples.*

i. The payment-example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (x), (xi), and (xii) need not be provided with the disclosures under § 226 if the disclosures under § 226.5b(d) were provided in a form the consumer could keep; and the disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum-payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or § 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii) and 226.5b(d)(12)(viii), (x), (xi) and (xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in ►§ 226.6(a)(3)◄ [§ 226.6(e)], state the corresponding annual percentage rate and provide the variable-rate information required in ►§ 226.6(a)(1)(ii)◄ [footnote 12] for the

repayment phase. To the extent the corresponding annual percentage rate, the information in ►§ 226.6(a)(1)(ii)◄ [footnote 12], and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

►*6(b) Rules affecting open-end (not home-secured) plans*◄ *[Other charges].*

►*6(b)(1) Charges imposed as part of open-end (not home-secured) plans.*

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when a cost that is a finance charge under § 226.4 will begin to accrue.

2. *Grace periods.* In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. For example, a statement that ''interest begins on the date the transaction is posted to your account'' adequately discloses that no grace period exists. In the same fashion, a statement that ''interest will be imposed on any new purchases only if the new balance from the previous statement was not paid in full within 25 days after the close of the billing cycle'' indicates that a grace period exists in the interim.

►3. *No finance charge imposed below certain balance.* Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.◄

Paragraph 6(b)(1)(i).

1. *Failure to use the plan as agreed.* Late payment fees, over-the-credit-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan.* Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan.* Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. *Amount of credit extended.* Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iv. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet, and fees to receive paper statements.

Paragraph 6(b)(1)(ii).

1. *Fees for package of services.* A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.◄

►*6(b)(2) Rules relating to rates for open-end (not home-secured) plans.*

Paragraph 6(b)(2)(i)(B).

1. *Range of balances.* Creditors are not required to disclose the range of balances:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0–$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

Paragraph 6(b)(2)(i)(D).

1. *Explanation of balance computation method.* Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as ''previous balance method'' or the name of a balance computation method listed in § 226.5a(g). (See Model Clauses G–1 in appendix G.) *See* § 226.6(b)(4) regarding balance computation descriptions in the account-opening summary.

2. *Allocation of payments.* Except as required by § 226.6(b)(4)(vi), creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See comment 7–1 for definition of multifeatured plan.)

Paragraph 6(b)(2)(ii).

1. *Variable-rate disclosures—coverage.*

i. *Examples.* Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificate of deposits.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. *Variable-rate plan—circumstances for increase.*

i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

A. ''The Treasury bill rate increases.''

B. ''The Federal Reserve discount rate increases.''

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

A. ''An increase will take effect on the day that the Treasury bill rate increases''

B. ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

3. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½ of 1% increase in the annual percentage rate per year will occur.''

4. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

5. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening disclosure should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required by § 226.6(b)(2)(ii).

Paragraph 6(b)(2)(iii).

1. *Events that cause the initial rate to change.*

i. *Changes based on expiration of time period.* If the initial rate will change at the expiration of a time period, creditors must identify the expiration date and the fact that the initial rate will end at that time.

ii. Changes based on specified contract terms. If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments,'' or if there is no limitation, the fact that the increased rate may remain indefinitely.

iii. *Terminating credit privileges.* Creditors need not disclose an increased rate that is imposed if credit privileges are permanently terminated.

3. *Effect of rate change on balances.* Creditors must disclose whether the rate change will affect outstanding balances, by type.

6(b)(4) Tabular format requirements for open-end (not home-secured) plans.

1. *Relation to tabular summary for applications and solicitations.* See commentary to § 226.5a(a), (b), and (c) regarding format and content requirements, except for the following:

i. Creditors must disclose any initial discounted rate that is offered and the time period during which the rate will remain in effect.

ii. Creditors must use the accuracy standard for annual percentage rates in § 226.6(b)(ii)(G).

iii. Creditors must disclose the specific rate for each feature that applies to the account if, at the time of application or solicitation, the creditor disclosed a number of specific rates or range of rates that might apply after the creditor has later determined the consumer's creditworthiness.

iv. Creditors must disclose fees imposed for transactions in a foreign currency or that take place in a foreign country.

v. Creditors must explain whether or not a grace period exists for all features on the account.

vi. Creditors must, in addition to naming the balance computation method used, state that an explanation of the balance computation method is provided in the account-opening disclosures.

vii. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

viii. The applicable forms providing safe harbors for account-opening tables are under appendix G–17.

2. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.6 disclosures.

3. *Terminology.* Section 226.6(b)(4)(i) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G; but see § 226.5(a)(2) for special rules that apply to the penalty rate disclosure required by § 226.6(b)(4)(ii)(C), the grace period disclosure required by § 226.6(b)(4)(iv), and to the disclosure of required insurance products or debt cancellation or suspension products pursuant to § 226.6(b)(4)(v).

6(b)(4)(ii) Annual percentage rates.

1. *Rates.* The only rates that shall be disclosed in the account-opening table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table. The index and margin values shall not be disclosed in the table.◄

►*6(c) Rules of general applicability.*◄

6(c) ►*(1)*◄ *Security interests.*

1. *General.* ►Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor s rights with respect to the collateral.◄ [Disclosure is not required about the type of security interest, or about the creditor's rights with respect to that collateral. In other words, the creditor need not expand on the term *security interest.* Also, since no specified terminology is required, the creditor may designate its interests by using, for example, *pledge*, *lien*, or *mortgage* (instead of *security interest*)].

2. *Identification of property.* ►Creditors sufficiently identify collateral by type◄ [Identification of the collateral by type is satisfied] by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* ►If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient.◄[The fact that collateral for

preexisting credit extensions with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) A specific identification of that collateral is unnecessary, but a reminder of the interest arising from the prior indebtedness is required. This may be accomplished by using language such as ''collateral securing other loans with us may also secure this loan.''] At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the ►account-opening◄ [initial] disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(c) ►(1)◄ –2.)

5. *Collateral from third party.* ►Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.◄ [In certain situations, the consumer's obligation may be secured by collateral belonging to a third party. For example, an open-end credit plan may be secured by an interest in property owned by the consumer's parents. In such cases, the security interest is taken in connection with the plan and must be disclosed, even though the property encumbered is owned by someone other than the consumer.]

[6(d)] ►*6(c)(2)*◄ *Statement of billing rights.*

See the commentary to appendix G–3►*, G–3(A), G–4,and G–4(A)*◄.

Section 226.7—Periodic Statement

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes ►additional guidance◄ [some special rules] for multifeatured plans.

[2. *Separate periodic statements permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate periodic statements that reflect the separate obligations owed to each.]

[3. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid finance charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred-payment plan where, for example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Periodic rates.* Under § 226.7(d), creditors must disclose each periodic rate that may be used to compute the finance charge. Under some plans with a deferred-payment feature, if the deferred-payment balance is not paid by the payment-due date, finance charges attributable to periodic rates applicable to the billing cycles between the date of purchase and the payment-due date (January through March in this example) may be imposed. Periodic rates that may apply to the deferred-payment balance ($500 in this example) if the balance is not paid in full by the payment-due date must appear on periodic statements for the billing cycles between the date of purchase and the payment-due date. However, if the consumer does not pay the deferred-payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the finance charge for the deferred-payment balance, periodic rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

ii. *Balances subject to periodic rates.* Under § 226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred-payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment-due date. Periodic statements sent for those billing cycles should not include the deferred-payment balance in the balance disclosed under § 226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(e) (such as ''deferred-payment balance''). During any billing cycle in which a periodic-rate finance charge on the deferred-payment balance is debited to the account, the balance disclosed under § 226.7(e) should include the deferred-payment balance for that billing cycle.

iii. *Amount of finance charge.* Under § 226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some deferred-payment purchases, the creditor may impose a finance charge from the date of purchase if the deferred-payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose finance charges for billing cycles between the date of purchase and the payment-due date. Periodic statements for billing cycles preceding the payment-due date should not include in the finance charge disclosed under § 226.7(f) the amounts a consumer may owe if the deferred-payment balance is not paid in full by the payment-due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''finance charge'' (such as ''contingent finance charge'' or ''deferred finance charge''). The finance charge on a deferred-payment balance should be reflected on the periodic statement under § 226.7(f) for the billing cycle in which the finance charge is debited to the account.

iv. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred-payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment-due date for the $500 purchase. (The creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred-payment period (January, February, and March in this example).

D. If the due date for the deferred-payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.]

7(a) ►Rules affecting home equity plans◄ [Previous balance].

►7(a)(1) Previous balance.◄

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

►7(a)(2)◄ [7(b)] Identification of transactions.

1. *Multifeatured plans.* In identifying transactions under ►§ 226.7(a)(2)◄ [§ 226.7(b)] for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

►7(a)(3)◄ [7(c)] Credits.

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to §§ 226.13(e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* ►A total of amounts credited during the billing cycle is not required.◄ [Where the creditor lists the credits made to the account during the billing cycle, the creditor need not disclose total figures for the amounts credited.]

►7(a)(4)◄ [7(d)] Periodic rates.

1. *Disclosure of periodic rates—whether or not actually applied.* Any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing rates effective during the next billing cycle ([either because it is changing terms or] because of a variable-rate plan), the rates required to be disclosed under ►§ 226.7(a)(4)◄ [§ 226.7(d)] are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5%, but the creditor will increase the rate to 1.8% effective June 1, 1.5% (and its corresponding annual percentage rate) is the only required disclosure under ►§ 226.7(a)(4)◄ [§ 226.7(d)] for the periodic statement reflecting the May account activity.

ii. [If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii.] If rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the *same* type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at .1% per month on the same outstanding balance), the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; .1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' ''corresponding nominal annual percentage rate,'' or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the actual annual percentage rate (historical rate) required to be disclosed (►§ 226.7(a)(7)◄ [§ 226.7(g)]), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.''

6. See comment ►6(a)(1)(ii)–1◄ [6(a)(2)–1]. ►A creditor is not required to adjust the range of balances disclosure to reflect the balance below

which only a minimum charge applies.◀

[7. *Deferred-payment transactions.* See comment 7–3.i.]

▶*7(a)(5)*◀ *[7(e)] Balance on which finance charge computed.*

1. *Limitation to periodic rates.* Section ▶§ 226.7(a)(5)◀ [§ 226.7(e)] only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment ▶7(a)(5)–5◀ [7(e)–5].)

3. *Monthly rate on average daily balance.* ▶Creditors may apply a monthly periodic rate to an average daily balance.◀ [If a creditor computes a finance charge on the average daily balance by application of a monthly periodic rate or rates, the balance is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed and also states how the balance is determined.]

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a ▶*grace*◀ [*free-ride*] period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment ▶7(a)(5)–5◀ [7(e)–5].)

5. *Daily rate on daily balances.* i. If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

iii. If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

6. *Explanation of balance computation method.* See the commentary to ▶6(a)(1)(iii)◀ [6(a)(3)].

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (▶§ 226.7(a)(3)◀ [§ 226.7(c)]) and indicating which credits will not be deducted in determining the balance (for example, credits after the 15th of the month are not deducted in computing the finance charge.).

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment ▶7(a)(5)–2◀ [7(e)–2]. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

[10. *Deferred payment transactions.* See comment 7–3.ii.]

▶*7(a)(6) Amount of finance charge and other charges.*◀ [*7(f) Amount of finance charge.*]

▶*Paragraph 7(a)(6)(i).*◀

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For

example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See comment ►6(a)(1)(iv)–1◄ [6(a)(4)–] for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See ►§ 226.14(c)(3)◄ [footnote 33] in the regulation.)

[9. *Deferred-payment transactions.* See comment 7–3.iii.]

►*Paragraph 7(a)(6)(ii).*◄ [*7(h) Other charges.*]

1. *Identification.* In identifying any *other charges* actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee*, for example. Similarly, *closing costs* or *settlement costs*, for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as *other charges* under ►§ 226.6(a)(2)◄ [§ 226.6(b)], these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (See comment ►6(a)(2)–1◄ [6(b)–1] for examples of *other charges*.)

2. *Date.* The date of imposing or debiting *other charges* need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges[, ATM fees that are not finance charges], and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three ►fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9◄ [ATM fees of $1 may be listed separately or as $3].

►*7(a)(7)*◄ [*7(g)*] *Annual percentage rate.*

1. *Rate same as corresponding annual percentage rate.* See comment ►7(a)(4)–5◄ [7(d)–5].

2. *Multifeatured plans.* In a multifeatured plan, the [actual] ►effective◄ annual percentage rate ►determined under § 226.14(c)◄ that reflects the finance charge imposed during the cycle may be separately stated for each feature or may be described as a composite for the whole plan. ►Where more than one rate applies for each feature, creditors may describe the annual percentage rate as a composite for each feature.◄

ALTERNATIVE 2—PARAGRAPH 7(a)(7)3.

►3. *Plans not subject to the requirements of § 226.5b.* For home equity plans not subject to the requirements of § 226.5b, creditors are not required to disclose an effective APR.◄

►*7(a)(8)*◄ [*7(j)*] *Grace [free-ride] period.*◄

1. ►*Terminology*◄ [*Wording*]. Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the ►account-opening◄ [initial] disclosure statement. For example, ''To avoid additional finance charges, pay the new balance before __________'' would suffice.

[2. *Deferred-payment transactions.* See comment 7–3.iv.]

►*7(a)(9)*◄ [*7(k)*] *Address for notice of billing errors.*

1. ►*Terminology*◄ [*Wording*]. The periodic statement l[must contain the address for consumers to use in asserting billing errors under § 226.13. Since all disclosures must be ''clear'', the statement] should indicate the general purpose for the address ►for billing-error inquiries◄, although ►a detailed◄ [no elaborate] explanation or particular wording is ►not◄ required.

2. *Telephone number.* A telephone number ►, e-mail address, or Web site location◄ may be included, but the ►mailing◄ address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. ►The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.◄ [One way to ensure that the address is clear and conspicuous is to include a precautionary instruction that telephoning will not preserve the consumer's billing-error rights. Both of the billing rights statements in appendix G contain such a precautionary instruction, so that a creditor could, by including either of these statements with each periodic statement, ensure that the required address is provided in a clear and conspicuous manner.]

►*7(a)(10)*◄ [*7(i)*] *Closing date of billing cycle; new balance.*

1. *Credit balances.* See comment ►7(a)(1)–1◄ [7(a)–1].

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new

balance need not reflect finance charges accrued since the last payment.

►*7(b) Rules affecting open-end (not home-secured) plans.*

1. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred-payment plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Annual percentage rates.* Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred-payment feature, if the deferred-payment balance is not paid by the payment-due date, interest charges applicable to the billing cycles between the date of purchase and the payment-due date (January through March in this example) may be imposed. Annual percentage rates that may apply to the deferred-payment balance ($500 in this example) if the balance is not paid in full by the payment-due date must appear on periodic statements for the billing cycles between the date of purchase and the payment-due date. However, if the consumer does not pay the deferred-payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred-payment balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

ii. *Balances subject to periodic rates.* Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred-payment balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and the payment-due date. Periodic statements sent for those billing cycles should not include the deferred-payment balance in the balance disclosed under § 226.7(b)(5). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as ''deferred-payment balance''). During any billing cycle in which a interest charge on the deferred-payment balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred-payment balance for that billing cycle.

iii. *Amount of interest charge.* Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred-payment purchases, the creditor may impose interest from the date of purchase if the deferred-payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose interest for billing cycles between the date of purchase and the payment-due date. Periodic statements for billing cycles preceding the payment-due date should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred-payment balance is not paid in full by the payment-due date. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''interest charge'' (such as ''contingent interest charge'' or ''deferred interest charge''). The interest charge on a deferred-payment balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. *Grace period.* Assuming monthly billing cycles ending at month-end and a grace period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the grace period applicable to a deferred-payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment-due date for the $500 purchase. (The creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred-payment period (January, February, and March in this example).

D. If the due date for the deferred-payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.◄

►*7(b)(1) Previous balance.*

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.◄

►*7(b)(2) Identification of transactions.*

1. *Multifeatured plans.* Creditors must arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions).

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.◄

►*7(b)(3) Credits.*

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to §§ 226.13(e) and (f).)

2. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* A total of amounts credited during the billing cycle is not required.◄

►*7(b)(4) Periodic rates.*

1. *Disclosure of periodic interest rates—whether or not actually applied.* Except as provided in § 226.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled ''Annual Percentage Rate,'' must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the interest rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the interest rate varies (such as when it is tied to a particular index), the creditor must disclose each interest rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible.* With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing interest rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under § 226.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If interest rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at .1% per month on the same outstanding balance), creditors must disclose the interest periodic rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

ALTERNATIVE 1—PARAGRAPH 7(b)(4)4.

4. *Rate same as effective annual percentage rate.* When the effective annual percentage rate disclosed under § 226.7(b)(7) is computed solely by application of periodic rates, the effective annual percentage rate is the same as the corresponding annual percentage rate. In that case, only one annual percentage rate needs to be disclosed, labeled as ''annual percentage rate.''

ALTERNATIVE 2—PARAGRAPH 7(b)(4)4.

4. [Reserved.]

5. *Ranges of balances.* See comment 6(b)(2)(ii)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. *Deferred-payment transactions.* See comment 7–2.i.

7. *Fees.* Creditors that identify fees in accordance with § 226.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.◄

► *7(b)(5) Balance on which finance charge computed.*

1. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(b)(5)–4.)

2. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance. ◄

3. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a *grace* period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(b)(5)–4 and 7(b)(4)–5.)

4. *Daily rate on daily balance.* i. If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

5. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the finance charge.'').

7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

8. *Deferred payment transactions.* See comment 7(b)–1.◄

►*7(b)(6) Charges imposed.*

1. *Examples of charges.* See commentary to § 226.6(b)(1).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer is required to obtain credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an ''interest charge'' and the credit insurance cost as a ''fee.''

3. *Total fees for calendar year to date.* Some creditors'' statement periods do not coincide with the calendar month. In such cases, the creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2008, through January 9, 2009, may disclose the year-to-date total for fees imposed from January 10, 2008, through January 9, 2009. Alternatively, the institution could provide a statement for the cycle ending January 9, 2009, showing the year-to-date total for fees imposed January 1, 2008, through December 31, 2008.

4. *Minimum charge in lieu of interest.* A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

ALTERNATIVE 1—PARAGRAPH 7(b)(6)5.

5. *Purchase transactions.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), any minimum, fixed or other charges identified in § 226.14(e) that is not due to the application of periodic rates used to calculate interest and not related to a specific transaction must be grouped together with any other charges relating to standard purchase balances for purchases of § 226.7(b)(6)(iv)(B).

► *7(b)(7) Effective annual percentage rate.*

ALTERNATIVE 1—PARAGRAPH. 7(b)(7).

1. *Rate same as corresponding annual percentage rate when § 226.14(d)(1) is applicable.* See comment 7(b)(4)–4.

2. *Itemized by type of transaction.* In a multifeatured plan, the effective annual percentage rate determined under § 226.14(d) must be separately stated for each type of transaction, for example, purchases, balance transfers, and cash advances.

ALTERNATIVE 2—PARAGRAPH 7(b)(7).

1. *Plans not subject to the requirements of § 226.5b.* For plans not subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate.◄

►*7(b)(8) Grace period.*

1. *Terminology.* In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. See § 226.5(a)(2)(i).

2. *Deferred-payment transactions.* See comment 7(b)–1. ◄

►*7(b)(9) Address for notice of billing errors.*

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.◄

►*7(b)(10) Closing date of billing cycle; new balance.*

1. *Credit balances.* See comment 7(b)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.*Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.◄

►*7(b)(11) Due date; late payment costs.*

1. *Informal periods affecting late payments.* Although the terms of the

account agreement may provide that a creditor may assess a late-payment fee if a payment is not received by a certain date, creditors sometimes have an informal policy that delays the assessment of the late-payment fee for payments received a brief period of time after the date upon which a creditor has the contractual right to impose the fee. Creditors must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal ''courtesy period'' as the due date under paragraph 7(b)(11) of this section.◀

▶*7(b)(12) Minimum payment.*

7(b)(12)(iii) Exemptions.

1. *Exemption for credit card accounts with a fixed repayment period.* The exemption in § 226.7(b)(12)(iii)(E) applies only if the account agreement specifies a fixed repayment period, such as providing that the minimum payment will pay off the entire balance on the account in one year. This exemption would apply, for example, to accounts where the account has been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. This exemption would not apply where a feature of a credit card may have a fixed repayment period, but the account as a whole does not. For example, assume a retail credit card has several features. One feature is a general revolving feature, where the minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption would not apply because the retail card account as a whole does not have a fixed repayment period. Nonetheless, these types of retail cards may qualify for the exemption in § 226.7(b)(12)(iii)(G).

2. *Exemption for certain credit card accounts with fixed repayment period feature.* The exemption applies if the entire outstanding balance for a particular billing cycle falls within a feature with a fixed repayment period that is specified in the account agreement, such as providing that the minimum payment will pay off the entire balance on that feature in one year. For example, assume a retail card card has several features. One feature is a general revolving feature, where the minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption applies if the entire outstanding balance for a particular billing cycle falls with the feature with the fixed repayment period. In that case, the issuer would not need to provide the minimum payment disclosures for that billing cycle. If the consumer used a general revolving feature during a billing period, this exemption would not apply.

7(b)(12)(iv) Toll-free telephone numbers.

1. *Third parties.* At their option, card issuers and the Federal Trade Commission (FTC) may use a third-party to establish and maintain a toll-free telephone number for use by the issuer or the FTC to provide the generic repayment estimates or actual repayment disclosures, as applicable.

2. *Automated response systems or devices.* At their option, card issuers and the FTC may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the generic repayment estimates or actual repayment disclosures described in appendix M1 or M2, as applicable, by inputting information using a touch-tone telephone or similar device. However, consumers whose telephones are not equipped to use such automated device must be provided the opportunity to be connected to an individual from whom the information may be obtained.

3. *Advertising or marketing information.* If a consumer requests the generic repayment estimate or the actual repayment disclosure, as applicable, the card issuer may not provide advertisements or marketing materials to the consumer prior to providing the information required or permitted by appendix M1 or M2, as applicable.◀

Section 226.8—[Identification of Transactions] ▶*Identifying Transactions on Periodic Statements*◀

▶*8(a) Sale credit.*

1. *Sale credit.* The term ''sale credit'' refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer. ''Sale credit'' includes:

i. Premiums for voluntary credit life insurance whether sold by the card issuer or another person.

ii. The purchase of funds-transfer services (such as telegrams) from an intermediary or an expedited payment service from a creditor.

2. *Amount—transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

3. *Date—when a transaction takes place.*

i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. *Date—sufficiency of description.*

i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the ''transaction date.'' If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. *Same or related persons.* i. For purposes of identifying transactions, the

term *same or related persons* refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Brief identification—sufficiency of description.* The ''brief identification'' provision in § 226.8(a)(2)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, ''merchandise,'' ''miscellaneous,'' ''second-hand goods,'' or ''promotional items'' would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, ''jewelry,'' or ''sporting goods.''

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. *Seller's name—sufficiency of description.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as ''Inc.,'' ''Co.,'' or ''Ltd.,'' may always be omitted.

8. *Location of transaction.*

i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as ''aboard plane,'' ''ABC Airways Flight,'' ''customer's home,'' ''telephone order,'' ''Internet order or mail order.''◄

►*8(b) Nonsale credit.*

1. *Nonsale credit.* The term nonsale credit refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on a checking account.

iii. The use of a ''supplemental credit device'' in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to a checking account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. *Date of transaction.* See comment 8(a)–4.

4. *Nonsale transaction—sufficiency of identification.* The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.◄

[1. *Application of identification rules.* Section 226.8 deals with the requirement (imposed by § 226.7(b)) for identification of each credit transaction made during the billing cycle. The rules for identifying transactions on periodic statements vary, depending on whether:

• The transaction involves sale credit (purchases) or nonsale credit (cash advances, for example).

• An actual copy of the credit document reflecting the transaction accompanies the statement (this is the distinction between so-called *country club* and *descriptive* billing).

• The creditor and seller are the same or related persons.

2. *Sale credit.* The term *sale credit* refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8–3 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer. *Sale credit* even includes:

• Premiums for voluntary credit life insurance whether sold by the card issuer or another person.

• The purchase of funds-transfer services (such as telegrams) from an intermediary.

3. *Nonsale credit.* The term *nonsale credit* refers to any form of loan credit including, for example:

• Cash advances.

• Overdraft checking.

• The use of a *supplemental credit device* in the form of a check or draft or the use of the overdraft feature of debit card, even if such use is in connection with a purchase of goods or services.

• Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

4. *Actual copy.* An actual copy does not include a recreated document. It includes, for example, a duplicate, carbon, or photographic copy, but does not include a so-called ''facsimile draft'' in which the required information is typed, printed, or otherwise recreated. If a facsimile draft is used, the creditor must follow the rules that apply when a copy of the credit document is not furnished.

5. *Same or related persons.* For purposes of identifying transactions, the term *same or related persons* refers to, for example:

• Franchised or licensed sellers of a creditor's product or service.

• Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

• A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Transactions resulting from promotional material.* In describing transactions with third-party sellers resulting from promotional material mailed by the creditor, creditors may use the rules either for ''related'' or for ''nonrelated'' sellers and creditors.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the

rule in § 226.8(a)(2) for *related* sellers and creditors, or the rule in § 226.8(a)(3) for *nonrelated* sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under § 226.8(a)(2), a brief identification of the services provided (for example, *credit life insurance*), or by disclosing, under § 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.

8. *Transactions involving creditors and sellers with corporate connections.* In a credit card plan established for use primarily with sellers that have no corporate connection with the creditor, the creditor may describe all transactions under the plan by using the rules in § 226.8(a)(3)—creditor and seller not same or related persons—including transactions involving a seller that has a corporate connection with the creditor. In other credit card plans, the creditor may describe transactions involving a seller that has a corporate connection with the creditor, such as subsidiary-parent, using the rules in § 226.8(a)(3) where it is unlikely that the consumer would know of the corporate connection between the creditor and the seller—for example, where the names of the creditor and the seller are not similar, and the periodic statement is issued in the name of the creditor only.

8(a) Sale credit.

1. *Date—disclosure of only one date.* If only the required date is disclosed for a transaction, the creditor need not identify it as the ''transaction date.'' If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

2. *Date—disclosure of month and day only.* The month and day are sufficient disclosure of the date on which the transaction took place, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

3. *When transaction takes place.* If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums. For mail, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone.

4. *Transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

8(a)(1) Copy of credit document provided.

1. *Format.* The information required by § 226.8(a)(1) may appear either on the copy of the credit document reflecting the transaction or on the periodic statement.

8(a)(2) Copy of credit document not provided—creditor and seller same or related person(s).

1. *Property identification—sufficiency of description.* The ''brief identification'' provision in § 226.8(a)(2) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

• While item-by-item descriptions are not necessary, reasonable precision is required. For example, *merchandise, miscellaneous, second-hand goods,* or *promotional items* would not suffice.

• A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, *jewelry, sporting goods.*

2. *Property identification—number or symbol.* The ''brief identification'' may be made by disclosing on the periodic statement a number or symbol that is related to an identification list printed elsewhere on the statement.

3. *Property identification—additional document.* In making the ''brief identification'' required by § 226.8(a)(2), the creditor may identify the property by describing the transaction on a document accompanying the periodic statement (for example, on a facsimile draft). (See also footnote 17.)

4. *Small creditors.* Under footnote 18, which provides a further identification alternative to a creditor with fewer than 15,000 accounts, the creditor need count only its own accounts and not others serviced by the same data processor or other shared-service provider.

5. *Date of transaction—foreign transactions.* In a foreign transaction, the debiting date may be considered the transaction date.

8(a)(3) Copy of credit document not provided—creditor and seller not same or related person(s).

1. *Seller's name.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

• A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

• An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as *Inc.*, *Co.*, or *Ltd.*, may always be omitted.

2. *Location of transaction.* The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the seller has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred.

3. *No fixed location.* When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor:

• May omit the address.

• May provide some other identifying designation, such as *aboard plane, ABC Airways Flight, customer's home, telephone order,* or *mail order.*

4. *Date of transaction—foreign transactions.* See comment 8(a)(2)–5.]

[8(b) Nonsale credit. 1. *Date of transaction.* If only one of the required dates is disclosed for a transaction, the creditor need not identify it. If the creditor discloses more than one date (for example, transaction date and debiting date), the creditor must identify each.

2. *Amount of transaction.* If credit is extended under an overdraft checking

account plan or by means of a debit card with an overdraft feature, the amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

3. *Amount—disclosure on cumulative basis.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, the creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit/credit card.

4. *Identification of transaction type.* The creditor may identify a transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.]

Section 226.9—Subsequent Disclosure Requirements

9(a) Furnishing Statement of Billing Rights.

9(a)(1) Annual Statement.

1. *General.* The creditor may provide the annual billing rights statement:

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar.* See the commentary to [appendix G–3] ►Model Form G–3 and G–3(A) in appendix G◄.

9(a)(2) Alternative Summary Statement

1. *Changing from long-form to short-form statement and vice versa.* If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar.* See the commentary to [appendix G–4] ►Model Forms G–4 and G–4(A) in appendix G◄.

9(b) Disclosures for Supplemental Credit ►Access◄ Devices and Additional Features.

1. *Credit ►access◄ device—examples. Credit ►access◄ device* includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit ►account◄ feature examples.* A new credit ►account◄ *feature* would include, for example:

►i.◄ The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves ''devices'')

►ii.◄ The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases

[*Paragraph 9(b)(1)*

1. *Same finance charge terms.* If the new means of accessing the account is subject to the same finance charge terms as those previously disclosed, the creditor:

• Need only provide a reminder that the new device or feature is covered by the earlier disclosures. (For example, in mailing special checks that directly access the credit line, the creditor might give a disclosure such as ''Use this as you would your XYZ card to obtain a cash advance from our bank'') or

• May remake the section 226.6(a) finance charge disclosures.]

Paragraph 9(b)(2)

1. *Different finance charge terms.* ►Except as provided in § 226.9(b)(3) for checks that access a credit card account, if◄ [If] the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new [initial] ►account-opening◄ disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

►*Paragraph 9(b)(3)*

1. *Discounted initial rate.* If the term ''introductory'' or ''intro'' is in the same phrase as the discounted initial annual percentage rate, it will be deemed to be in immediate proximity of the listing of the discounted rate.◄

9(c) Change in Terms.

►*9(c)(1) Rules Affecting Home equity Plans*◄

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. [In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate).] The rules in § 226.5b(f) relating to home equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c) because they are controlled by State or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f))

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6 ►(a)◄ or increases the minimum payment, unless an exception under ►§ 226.9(c)(1)(ii)◄ [§ 226.9(c)(2)] applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day ►grace◄ [free-ride] period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1) ►*(i)*◄ *Written Notice Required*

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(1) ►(i)◄: The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under State law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c) ►(1)(i)◄ if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) ►(1)◄ applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5►b◄(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimim payment requirement. (See the commentary to § 226.5b(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

[9(c)(2)] ►9(c)(1)(ii)◄ Notice Not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 226.5b(f))

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice.

►9(c)(1)(iii) Notice to Restrict Credit◄ [9(c)(3) Notice for Home Equity Plans]

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under ►§ 226.9(c)(1)(iii)◄ [§ 226.9(c)(3)] must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

►9(c)(2) Rules Affecting Open-end (Not Home-secured) Plans

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable law. These issues include:

i. The types of changes a creditor may make.

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(ii) or (c)(2)(iv) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(2)(i) Changes Where Written Advance Notice Is Required

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their

accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits midcycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(2)►(i)◄: The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under State law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* Except if § 226.9(c)(2)(iii) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

9(c)(2)(ii) Charges not covered by § 226.6(b)(4).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may either, at its option (1) provide at least 45 days written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (2) provide notice orally or in writing of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge. For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge.

2. *Relevant time.* Creditors meet the standard to provide the notice under § 226.9(c)(2)(ii)(B) at a relevant time if the oral or written notice of a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call.

9(c)(2)(iii) Disclosure Requirements

9(c)(2)(iii)(A) Changes to Terms in § 226.6(b)(4).

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iii), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 226.6(b)(4). For example, if a creditor is changing from using a prime rate in calculating a variable rate to using the LIBOR, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table.

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the [insert the index used, such as the prime rate or the LIBOR.]

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(4) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)'', and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100).''

7. *Combining a notice described in § 226.9(c)(2)(iii) with a notice described in § 226.9(g)(3).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iii) and a notice described in § 226.9(g)(3) to a consumer, the

creditor may combine the two notices. This would occur if a consumer's actions trigger penalty pricing, and other terms are changing on the consumer's account at the same time.

8. *Content.* Model Clause G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iii) when the following terms are being changed: (1) A variable rate is being changed to a non-variable rate of 16.99%; and (2) the late payment fee is being increased to $32 if the consumer's balance is less than or equal to $1,000 and $39 if the consumer's balance is more than $1,000.

9. *Clear and conspicuous standard.* See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iii)(A)(1).

10. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iii)(A)(1).◄

►*9(c)(2)(iv) Notice Not Required.*

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer s credit limit except as otherwise required by § 226.9(c)(2)(v).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as ''You may skip your October payment, ''or'' We will waive your interest charges for January may serve as the change-in-terms notice.◄

9(d) Finance Charge Imposed at Time of Transaction.

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

9(e) Disclosures Upon Renewal of Credit or Charge Card.

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a) ►(5)◄ [(3)] and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date ►within the last 30 days before the disclosure is provided◄ [(and then update the rate from time to time, for example, each calendar month) or use an estimated rate under § 226.5(c)].

5. *Renewals more frequent than annual.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. *Terminating credit availability.* Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. *Timing of termination by cardholder.* When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account. When notice is given under § 226.9(e)(2), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account,

the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(3) Notification on Periodic Statements

1. *Combined disclosures.* If a single disclosure is used to comply with both § 226.9(e) and § 226.7, the periodic statement must comply with the rules in § 226.5a and § 226.7. For example, the words *grace period* must be used and the name of the balance-calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a [, even though the use of those terms would not otherwise be required for periodic statements under § 226.7]. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that ►the disclosures◄ [they] relate to one another. ►An example of a sufficient reference for creditors using the delayed notice method is: ''Your annual fee of [$ amount] is billed on this statement. Please see [other side/inserts] for important information about the terms that apply to the renewal of your account and how to close your account to avoid paying the annual fee.''◄ All renewal disclosures must be provided to a cardholder at the same time.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance-notice option under § 226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

9(f) Change in Credit Card Account Insurance Provider.

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance providers. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in providers, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to appendix G–13.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial Decrease in Coverage.

1. *Determination.* Whether a substantial decrease in coverage will result from the change in providers is determined by the two-part test in § 226.9(f)(3): First, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

►*9(g) Increase in Rates Due to Delinquency or Default or as a Penalty.*

1. *Applicability.* Section 226.9(g) requires a creditor to provide written notice to a consumer when (1) a rate is increased due to the consumer's delinquency or default, or (2) a rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit. This notice must be provided after the occurrence of the event that triggered the imposition of the rate increase and at least 45 days prior to the effective date of the increase. For example, assume a credit card account agreement indicates that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once, and assume that the consumer pays late one month. If the creditor will increase the rates on the account because of this late payment, the creditor must provide the consumer written notice of the increase at least 45 days before the increase becomes effective.

2. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

3. *Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iii).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iii) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur when a consumer has triggered penalty pricing, and other terms are changing on the consumer's account at the same time.

4. *Content.* Model Clause G–21 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's account is being increased to a penalty rate as described in § 226.9(g)(1)(ii).

5. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

6. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).◄

Section 226.10—Prompt Crediting of Payments

10(a) General rule.

1. *Crediting date.* Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment *as of* the date of receipt.

2. *Date of receipt.* The ''date of receipt'' is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under section 226.10(b).

►iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after any cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.◄

10(b) Specific requirements for payments.

1. *Payment requirements.* i. The creditor may specify requirements for making payments, such as:

A. Requiring that payments be accompanied by the account number or the payment stub.

B. Setting a cut-off time for payment to be received, or set a different time for payments by mail►, payments by electronic means,◄ and payments made in person.

C. Specifying that only checks or money orders should be sent by mail.

D. Specifying that payment is to be made in U.S. dollars.

E. Specifying one particular address for receiving payments, such as a post office box.

ii. The creditor may be prohibited, however, from specifying payment for preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments. ►If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site would generally be conforming payments for purposes of § 226.10(b).◄

3. *Acceptance of nonconforming payments.* If the creditor accepts a nonconforming payment (for example, payment at a branch office, when it had specified that payment be sent to headquarters), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments.* In the absence of specified requirements for making payments (see § 226.10(b)):

i. Payments may be made at any location where the creditor conducts business.

ii. Payments may be made any time during the creditor's normal business hours.

iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

Section 226.11—Treatment of Credit Balances►; Account Termination◄

►*11(a) Credit balances.*◄

1. *Timing of refund.* The creditor may also fulfill its obligations under § 226.11 by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under § 226.11(b)) from the consumer.

►iii. Refunding any credit balance upon the consumer's oral or electronic request.◄

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrase *any part of the credit balance remaining in the account* in § 226.11(b) and (c) means the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

Paragraph ►11(a)(2)◄ [11(b)].

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph ►11(a)(3)◄ [11(c)].

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

►*11(b) Account termination.*

Paragraph 11(b)(1).

1. *Expiration Date.* The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated expiration date are prohibited from terminating those accounts solely because a consumer uses the account and does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period.◄

Section 226.12—Special Credit Card Provisions

1. *Scope.* Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 226.1 and 226.3.)

►2. *Definition of "accepted credit card".* For purposes of this section, accepted credit card means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph becomes an accepted credit card when received by the cardholder.◄

12(a) Issuance of credit cards.

Paragraph 12(a)(1)

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for ►an overdraft plan tied to◄ [overdraft privileges on] a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not *cardholders* as that term is defined in § 226.2 and used in § 226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.*

i. *General.* Under § 226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

Paragraph 12(a)(2)

1. *Renewal. Renewal* generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples. Substitution* encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The *substitution* of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base. However, the new card must be honored by at least one of the persons that honored the original card.

3. *Substitution—successor card issuer. Substitution* also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan *not* involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way; for example:

i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

ii. The original card contained an expiration date.

iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on

the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

12(b) Liability of cardholder for unauthorized use.

1. *Meaning of cardholder.* For purposes of this provision, *cardholder* includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

►4. *Checks that access a credit card account.* The liability provisions for unauthorized use under paragraph (b)(1) of this section only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in § 226.13 apply to both of these types of transactions.◄

12(b)(1)(ii) Limitation on amount.

1. *Meaning of authority.* [Footnote 22] ►Section 226.12(b)(1)(i)◄ defines unauthorized use in terms of whether the user has *actual, implied,* or *apparent authority*. Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.

►3. *Implied or apparent authority.* If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or co-worker) who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.

4. *Credit card obtained through robbery or fraud.* An unauthorized use includes a transaction initiated by a person who obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.◄

12(b)(2) Conditions of liability.

1. *Issuer s option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed [below] ►in § 226.12(b)(2)◄.

Paragraph 12(b)(2)(ii).

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in § 226.12(b)(2)(ii) may be given, for example, with the initial disclosures under § 226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

►2. *Meaning of ''adequate notice''.* For purposes of this provision, ''adequate notice'' means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.◄

Paragraph 12(b)(2)(iii).

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in § 226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, signature, photograph, or fingerprint on the card ►or other biometric means◄, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a ''pool'' or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under § 226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone ►or the Internet◄ by a person without authority to do so, using a credit card account number ►by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number)◄ [or other number only (which may be widely available)], no liability may be imposed on the cardholder.

12(b)(3) Notification to card issuer.

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail,

telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the ''pertinent information'' which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the § 226.12 protections. ►See also comment 12(b)(1)–4.◄

12(b)(5) Business use of credit cards.

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on § 226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against liability for unauthorized use in excess of the limits set in § 226.12(b) applies only to unauthorized use by someone other then the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

12(c) Right of cardholder to assert claims or defenses against card issuer.

1. *Relationship to § 226.13.* The § 226.12(c) credit card ''holder in due course'' provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute ''billing errors'' under § 226.13, that section operates independently of § 226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a ''defense'' and a billing error.

2. *Claims and defenses assertible.* Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

►3. *Transactions excluded.* This paragraph does not apply to the use of a check-guarantee card or a debit card in connection with an overdraft credit plan, or to a check-guarantee card used in connection with cash-advance checks.

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.◄

12(c)(1) General rule.

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This could include mail►, the Internet◄ or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve ''property or services purchased with the credit card.''

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). See ►comment 12(c)–3◄ [footnote 24]. A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit [lines] ►plans◄ (see ►comment 12(c)–3◄ [footnote 24]). The debit card exemption applies whether the card accesses an asset account via point-of-sale terminals, automated teller machines, or in any other way[, and whether the card qualifies as an ''access device'' under Regulation E or is only a paper-based debit card]. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse credit reports prohibited.

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the

cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

12(c)(3) Limitations.

Paragraph 12(c)(3)(i) ►(A)◄.

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings►, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly◄.

Paragraph 12(c)(3)[(ii)] ►(i)(B)◄.

1. *Geographic limitation.* The question of where a transaction occurs (as in the case of mail►, Internet,◄ or telephone orders, for example) is to be determined under state or other applicable law.

►*Paragraph 12(c)(3)(ii).*◄

►1.◄ [2.] *Merchant honoring card.* The exceptions (stated in ►§ 226.13(c)(3)(ii)◄ [footnote 26]) to the amount and geographic limitations ►in § 226.13(c)(3)(i)(B)◄ do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

12(d) Offsets by card issuer prohibited.

Paragraph 12(d)(1).

1. *Holds on accounts.* ''Freezing'' or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in § 226.12(d)(1), unless done in the context of one of the exceptions specified in § 226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

Paragraph 12(d)(2).

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's initial disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2), the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent could include, for example:

A. Separate signature or initials on the agreement indicating that a security interest is being given

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions

C. Reference to a specific amount of deposited funds or to a specific deposit account number

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

2. *Security interest—after-acquired property.* As used in § 226.12(d), the term ''security interest'' does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if State and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3).

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by § 226.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

12(e) Prompt notification of returns and crediting of refunds.

Paragraph 12(e)(1).

1. *Normal channels.* The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2).

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the

account as of a date within that time period.

Section 226.13—Billing-Error Resolution

[1. *General prohibitions.* Footnote 27 prohibits a creditor from responding to a consumer's billing error allegation by accelerating the debt or closing the account, and reflects protections authorized by section 161(d) of the Truth in Lending Act and section 701 of the Equal Credit Opportunity Act. The footnote also alerts creditors that failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the Act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the Act.)]

►1.◄ [2.] *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the Act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

13(a) Definition of billing error.

►*Paragraph 13(a)(1).*◄

1. *Actual, implied, or apparent authority.* Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. ►See comments 12(b)(1)–1, –2.◄

Paragraph 13(a)(3).

1. *Coverage.* Section 226.13(a)(3) covers disputes about goods or services that are ''not accepted'' or ''not delivered * * * as agreed''; for example:

i. The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.

ii. Delivery of property or services different from that agreed upon.

iii. Delivery of the wrong quantity.

iv. Late delivery.

v. Delivery to the wrong location.

Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

►2. *Application to purchases made using a third-party payment intermediary.* Section 226.13(a)(3) applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service.

3. *Notice to merchant not required.* A consumer is not required to first notify the merchant or other payee from whom they have purchased goods or services in order to provide a billing-error notice to the creditor under paragraph (a)(3) of this section asserting that the goods or services were not accepted or delivered as agreed.◄

Paragraph 13(a)(5).

1. *Computational errors.* In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example[:

i. If]► if◄ a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

Paragraph 13(a)(6).

1. *Documentation requests.* A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under § 226.13(a) or a request for additional clarification under § 226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

13(b) Billing error notice.

1. *Withdrawal ►of billing error notice by consumer◄.* ►The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.◄ The consumer's withdrawal of a billing error notice may be oral or written.

►2. *Form of written notice.* The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(d) and 226.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of § 226.13(b).◄

Paragraph 13(b)(1).

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it. ►See also § 226.12(e).◄

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is ''transmitted'' when it is first made available to the consumer.

Paragraph 13(b)(2).

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

13(c) Time for resolution; general procedures.

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

►3. *Relationship with § 226.12.* The consumer s rights under the billing error provisions in § 226.13 are independent of the provisions set forth in § 226.12(b) and (c). See comments 12(b)(1)–4, 12(b)(4)–3, and 12(c)–1.◄

Paragraph 13(c)(2).

1. *Time for resolution.* The phrase two complete billing cycles means 2 actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to 2 billing cycles. For

example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next 2 full billing cycles to resolve the error.

►2. *Finality of error resolution procedure.* A creditor must complete its investigation and conclusively determine whether an error occurred within the time period set forth in paragraph (c)(2) of this section. Thus, for example, once the two-billing cycle period for completing an investigation of an alleged billing error has expired, a creditor may not reverse any amounts previously credited related to that alleged billing error, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted by the consumer.◄

13(d) Rules pending resolution.

1. *Disputed amount. Disputed amount* is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under § 226.13(a)(7), the disputed amount is the entire balance owing.

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under ►paragraph (d)(4) of this section◄ [footnote 30], the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer s right under § 226.13(d)(1) to withhold related finance and other charges. The disclosure under ►paragraph (d)(4) of this section◄ [footnote 30] need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a ►grace◄ [free-ride] period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the ►grace◄ [free-ride] period, the consumer would not lose the ►grace period◄ [free-ride] as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans—coverage.* The coverage of this provision is limited to the card issuer's ►automatic◄ [intra-institutional] payment plans►, whether or not the consumer's asset account is held by the card issuer or by another financial institution◄. It does not apply to[:

[• Inter-institutional payment plans that permit a cardholder to pay automatically any credit card indebtedness from an asset account not held by the card issuer receiving payment.

• I]► i◄ntra-institutional automatic payment plans offered by financial institutions that are not credit card issuers.

5. *Automatic payment plans—time of notice.* While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the 3-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

13(d)(2) Adverse credit reports prohibited.

1. *Report of dispute.* Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *Person.* During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent.* Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

13(e) Procedures if billing error occurred as asserted.

1. *Correction of error.* The phrase *as applicable* means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in § 226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice.* The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.

►3. *Discovery of information after investigation period.* See comment 13(c)(2)–2.◄

13(f) Procedures if different billing error or no billing error occurred.

1. *Different billing error.* Examples of a different billing error include:

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation.* The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction

notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under § 226.13(g)(1), provided it is sent within the time limit for resolution. (See Commentary to § 226.13(e).)

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice.* The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under § 226.13(f)(1), the combined notice must be provided within the time limit for resolution.

Paragraph 13(g)(2).

1. ►*Grace period if no error occurred.* If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under §§ 226.6(a)(1) and 226.7(j) to pay any disputed amounts due without incurring additional finance or other charges. However, the◄ [The] creditor need not allow a ►grace◄ [free-ride] period disclosed under §§ 226.6(a)(1) and 226.7(j) to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a ►grace◄ [free-ride] period at the time the consumer asserted the error. ►For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (i.e., the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of undisputed charges in full, the creditor may assess finance charges on the disputed balance.◄

Paragraph 13(g)(3).

1. *Time for payment.* The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed ►grace◄ [free-ride] period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

Paragraph 13(g)(4).

1. *Credit reporting.* Under § 226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its § 226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under agreement.* Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by § 226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example► ,◄ [:

•C]►c◄ redit inadvertently extended incident to an electronic fund transfer►, such as under an overdraft protection plan not subject to Regulation Z,◄ is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions-examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under § 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §§ 226.13(d) and (g) apply only to the credit portion of the transaction.

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

1. *Tolerance.* The tolerance of 1⁄8 of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ ►226.5a, 226.5b, ◄ 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within 1⁄8 of the of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14 1⁄4%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* ►The regulation◄ [Footnote 31a] relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool self, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate ►—in general◄ [for §§ 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes].

1. *Corresponding annual percentage rate computation.* For purposes of §§ 226.5a, 226.5b, 226.6►, 226.7(d), 226.9, 226.15,◄ [and] 226.16, and ►226.26,◄ the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance. [This computation also is used to determine any annual percentage rate for oral disclosures under § 226.26(a).]

14(c) ►Effective◄ annual percentage rate ►for home equity plans◄ [for periodic statements].

1. *General rule.* [Section 226.14(c) requires disclosure of the corresponding annual percentage rate for each periodic rate (under § 226.7(d)). It is figured by multiplying each periodic rate by the number of periods per year. This disclosure is like that provided on the initial account-opening disclosure statement.] The periodic statement [also] must reflect (under § 226.7(g)) the annualized equivalent of the rate actually applied during a particular cycle [(the historical rate)]; this rate may differ from the corresponding annual percentage rate because of the inclusion of►, for example,◄ fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)[(4)] ►(5)◄ state the computation rules for the ►effective◄ [historical] rate.

►2.◄ [7.] *Charges related to opening, renewing, or continuing an account.* [Footnote 33 is applicable to § 226.14(c)(2) and (c)(3).] ►Section 226.14(c)(2) and 226.14(c)(3) excludes from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account.◄ The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.) [Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. The] ►This◄ rule [in footnote 33] applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

►3.◄ [8.] *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3% of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

►4.◄ [9.] *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month. [This option is consistent with the provision in footnote 11 to §§ 226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.]

►5.◄ [10.] *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)–10.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

►6. *Calculations where daily periodic rate applied.* Section 226.14(c)(5) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in §§ 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(c)(5) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the requirement in § 226.7(b)(i). If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.◄

►*14(c)(1) Solely periodic rates imposed.*◄

►1.◄ [2.] *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ''quotient'' method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½% on balances up to $500, and 1% on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500 × .015) plus $3.00 (300 × .01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12% on $300, or as 15.75% on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

►*14(c)(2) Minimum or fixed charge, but not transaction charge, imposed.*◄

►1.◄ [3.] ►*Certain charges*◄ *[Charges] not based on periodic rates.* Section 226.14(c)(2) [applies] ►requires use of the quotient method to determine the annual percentage rate◄ if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30% (1/40 × 12).

►2.◄ [4.] *No balance.* [Footnote 32 to § 226.14(c)(2) would apply not only] ►If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only◄ when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

►*14(c)(3) Transaction charge imposed.*◄

►1.◄ [5.] *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3% of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see Appendix F.

►2.◄ [6.] *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in Appendix F in calculating the annual percentage rate, especially ►the provision in the introductory section of ◄[footnote 1 to] Appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''

ALTERNATIVE 1—PARAGRAPH 14(d).

14(d) ►*Effective annual percentage rate for open-end (not home-secured) plans* ◄*[Calculations where daily periodic rate applied].*

►1. *General rule.* The periodic statement must reflect under § 226.7(b)(7) the annualized equivalent of the rate actually applied during a particular cycle (the effective rate); this rate may differ from the corresponding annual percentage rate because of the inclusion of minimum, fixed, or transaction charges. Sections 226.14 (d)(1) through (d)(5) state the computation rules for the effective rate.

2. *Classification of charges.* If the finance charge includes a charge not attributable to a periodic rate used to calculate interest, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3% of the amount of each transaction), then the method in § 226.14(d)(3) must be used. If a fixed or minimum charge is applied, that is, one not related to any specific transaction, then the formula in § 226.14(d)(2) is appropriate.

3. *Calculated by feature.* For multifeatured plans, the effective annual percentage rate(s) calculated pursuant to § 226.14(d) must be separately calculated by feature.

4. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges identified in § 226.14(e) imposed during the billing cycle. However, such finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(d)–3.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.◄

[1. *Quotient Method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) does not work when a daily rate is being applied to a series of daily balances, § 226.14(d) gives the creditor 2 alternative ways to figure the annual percentage rate—either of which satisfies the requirement in § 226.7(g).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)–6 for guidance on an appropriate calculation method.]

►*14(d)(1) Solely periodic rates imposed.*

1. *Periodic rates.* Section 226.14(d)(1) applies if the only finance charge identified in § 226.14(e) imposed in a billing cycle is attributable solely to one or more periodic rates used to calculate interest. The creditor must compute the effective annual percentage rate(s) by multiplying each periodic rate by the number of periods in the year.◄

►*14(d)(2) Minimum or fixed charge, but not transaction charge, imposed.*

1. *Purchase features.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), the minimum charges or other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction must be included in the calculation of the effective annual percentage rate for the standard purchase feature. The effective annual percentage rate for the promotional purchase feature, for example, must be calculated under § 226.14(d)(2)(i)(B).

2. *No balance.* If there is no purchase balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(d)(2)(i) or (ii). This could occur not only when minimum charges are imposed on an account with no balance, but also to a plan in which a periodic rate is applied to balances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

3. *Calculations where daily periodic rate applied.* Section 226.14(d)(2)(i) and § 226.14(d)(2)(ii) address use of a daily periodic rate(s) to determine some or all of the finance charge identified in § 226.14(e) and use of the quotient method to determine the annual percentage rate. Since the quotient formula does not work when a daily rate is being applied to a series of daily balances, § 226.14(d)(2)(i) and § 226.14(d)(2)(ii) give the creditor two alternative ways to compute the annual percentage rate—either of which satisfies the requirement in § 226.7(b)(7). If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)(3)–3 for guidance on an appropriate calculation method.◄

►*14(d)(3) Transaction charge imposed.*

1. *Purchase features.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), any minimum charges or other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction must be included in the calculation of the effective annual percentage rate for the standard purchase feature. Charges that relate to a specific transaction must be included in the calculation of the effective annual percentage rate for that type of transaction. For example, if a charge is applicable to a specific promotional purchase transaction, that charge must be included in calculating the effective annual percentage rate for the promotional purchase feature.

2. *Duplication.* The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. For further explanation and examples of how to determine the components of this formula, see appendix F.

3. *Daily rate with specific transaction charge.* Section 226.14(d)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F in calculating the annual percentage rate, especially the provision in the introductory section of appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''◄

►*Paragraph 14(d)(4)*

1. *Small finance charges.* Section 226.14(d)(4) gives the creditor an alternative to § 226.14(d)(2) and (d)(3) if the sum of charges identified in paragraph (d)(2) or (d)(3) does not exceed $1.00 for a monthly or longer billing cycle, or the pro rata part of $1.00 for a billing cycle shorter than monthly. In that case, the creditor may determine the annual percentage rate by multiplying each applicable periodic rate by the number of periods in a year.◄

►*Finance charges to be included in the calculation of the effective annual percentage rate under § 226.14(d).*

Paragraph 14(e)(1)

1. *Transaction charges.* i. For purposes of § 226.14, transaction charges include, for example:

i. A loan fee of $10 imposed on a particular advance.

ii. A charge of 3% of the amount of each transaction.

Paragraph 14(e)(2).

1. *Charges imposed as a condition to opening an account.* Section 226.14(e)(2) provides that the finance charges that trigger the requirement to calculate an effective annual percentage rate under § 226.14(d)(2) or (3) do not include a charge related to opening the account. This rule applies even if loan fees, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

2. *Annual charges.* Section 226.14(e)(2) provides that the finance charges that trigger the requirement to calculate an effective annual percentage rate under § 226.14(d)(2) or (3) do not include a charge related to continuing or renewing the account, unless the charge is imposed more often than annually. For example, a fee imposed annually to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.)◄

* * * * *

Section 226.16—Advertising

1. *Clear and conspicuous standard ►—general◄.* Section 226.16 is subject to the general ''clear and conspicuous'' standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures►, other than the format requirements related to the disclosure of an introductory rate under § 226.16(e)◄. ►Other than the terms described in § 226.16(e),◄ the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

►2. *Clear and conspicuous standard—introductory rates.* For purposes of § 226.16(e), a clear and conspicuous disclosure means the required information in §§ 226.16(e)(4)(i) and (ii) must be equally prominent to the introductory rate to which it applies. If the information in §§ 226.16(e)(4)(i) and (ii) is the same type size as the introductory rate to which it applies, the disclosures would be deemed to be equally prominent.◄

►3.◄ [2]. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

16(a) Actually available terms.

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms. Specific credit terms* is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

16(b) Advertisement of terms that require additional disclosures.

1. ►*Triggering terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no interest* or *no annual membership fee* in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:

i. *Small monthly service charge on the remaining balance,* which describes how the amount of a finance charge will be determined.

ii. *12 percent Annual Percentage Rate* or *A $15 annual membership fee buys you $2,000 in credit,*'' which describe required disclosures under § 226.6.◄

[*Terms requiring additional disclosures.* In § 226.16(b) the phrase ''the terms required to be disclosed under § 226.6'' refers to the terms in § 226.6(a) and § 226.6(b).]

[2. *Use of positive terms.* An advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, ''no annual membership fee'' would not trigger the additional disclosures required by § 226.16(b). (See, however, the rules in § 226.16(d) relating to advertisements for home equity plans.)]

►2.◄ [3.] *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

►3.◄ [4.] *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment ►6(a)(2)–2 and § 226.6(b)(1)(ii)(B)◄ [6(b)–1]).

►4. *Deferred-billing and deferred-payment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as ''No interest charges until May'' or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.◄

5. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(2), the creditor may use an insert showing the current rate; ►or◄ may give the rate as of a specified recent date[; or may disclose an estimated rate under § 226.5(c)]. The additional requirement in § 226.16(b) ►(1)(ii)◄ [(2)] to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by [footnote 12 to § 226.6(a)(2)]►§ 226.6(a)(1)(ii) or § 226.6(b)(2) ◄.

[6. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)–10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment 16(b)–5 may be used in disclosing the current indexed rate.]

[7. *Triggering terms.* The following are examples of terms that trigger additional disclosures:

• ''Small monthly service charge on the remaining balance,'' which describes how the amount of a finance charge will be determined.

• ''12 percent Annual Percentage Rate'' or ''A $15 annual membership fee buys you $2,000 in credit,'' which describe required disclosures using positive numbers.]

[8. *Minimum, fixed, transaction, activity, or similar charge.* The charges to be disclosed under § 226.16(b)(1) are those that are considered finance charges under § 226.4.]

[9. *Deferred-billing and deferred-payment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as ''No finance charge until May'' or any other statement regarding when finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.]

16(c) Catalogs or other multiple-page advertisements; electronic advertisements.

1. *Definition.* The multiple-page advertisements to which § 226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.16(c).

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement ►(such as an advertisement appearing on an Internet Web site)◄. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic ►advertisement◄ [communication].* If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

Paragraph 16(c)(2).

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

►*Paragraph 16(c)(3).*

1. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

16(d) Additional requirements for home equity plans.

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no annual fee, no points,* or *we waive closing costs* in an advertisement, additional information must be provided. (*See* comment 16(d)–4 regarding the use of a phrase such as *no closing costs.*) Inclusion of a statement such as *low fees*, however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. *Fees to open the plan.* Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to § 226.5b(d)(7) and (8).)

3. *Statements of tax deductibility.* An advertisement referring to deductiblity for tax purposes is not misleading if it includes a statement such as ''consult a tax advisor regarding the deductibility of interest.''

4. *Misleading terms prohibited.* Under § 226.16(d)(5), advertisements may not refer to home equity plans as *free money* or use other misleading terms. For example, an advertisement could not state ''no closing costs'' or ''we waive closing costs'' if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, ''no closing costs'' even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (*See* the commentary to this section regarding fees to open a plan.)

5. *Relation to other sections.* Advertisements for home equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b)(1) and (3).

6. *Inapplicability of closed-end rules.* Advertisements for home equity plans are governed solely by the requirements in § 226.16, and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

7. *Balloon payment.* In some programs, a balloon payment will occur if only the minimum payments under the plan are made. If an advertisement for such a program contains any statement about a minimum periodic payment, the advertisement must also state that a balloon payment will result (not merely that a balloon payment ''may'' result). (See comment 5b(d)(5)(ii)–3 for guidance on items not required to be stated in the advertisement, and on situations in which the balloon payment requirement does not apply.)

►*16(e) Introductory rates.*

1. *Use of term ''introductory''.* Advertisers may use the term ''intro'' in place of the term ''introductory.''

2. *Immediate proximity.* Including the term ''introductory'' or ''intro'' in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* Information required to be disclosed in §§ 226.16(e)(4)(i) and (ii) that is in the same paragraph as the first listing of the introductory rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will

not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(e)(4), the first listing of the introductory rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the introductory rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate on the front side of the first page of each document listing the introductory rate. If the listing of the introductory rate with the largest type size on the front side of the first page of the principal promotional document (or each document listing the introductory rate if the introductory rate is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing.

5. *Post-introductory rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the temporary rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%).◄

►*16(f) Alternative disclosures television or radio advertisements.*

1. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 226.16(f)(1), an advertisement must provide a toll-free telephone number. Alternatively, an advertiser may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

2. *Multi-purpose number.* When an advertised toll-free telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

3. *Statement accompanying toll free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as ''call 1–800–000–0000 for details about credit costs and terms.''◄

* * * * *

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see ► comments 14(c)–6 and 14(d)(3)–3 ◄[comment 14(c)–6] for guidance on an appropriate calculation method.

►Appendices◄ [Appendixes] G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability►, except formatting changes may not be made to model forms and samples in G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(C), G–18(A)–(F), G–19, G–20, and G–21.◄ [(But see appendix G comment 5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations.)] The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

[vii. Substituting appropriate references, such as ''bank,'' ''we,'' or a specific name, for ''creditor'' in the initial open-end disclosures.]

►vii◄ [viii.] Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. *Debt-cancellation coverage.* This regulation does not authorize creditors to characterize debt-cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation► or debt suspension◄ coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

Appendix G—Open-End Model Forms and Clauses

1. *Model G–1.* The model disclosures in G–1 (different balance computation methods) may be used in both the ►account-opening ◄[initial] disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, ''shorthand'' descriptions of the balance computation methods are not sufficient►, except where § 226.7(b)(5) applies◄. The phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. In addition, if unpaid finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to section 226.7► (a)(5) and 226.7(b)(5) ◄[(e)].)

2. *Models G–2► and G–2(A)◄.* ►These models contain◄ [This model contains] the notice of liability for unauthorized use of a credit card. ►For home equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–2 or G–2(A). For open-end plans not subject to the requirements of § 226.5b, creditors may use G–2(A).◄

3. *Models G–3, ►G–3(A),◄ [and] G–4 ►and G–4(A)◄.* i. These set out models for the long-form billing-error rights statement (for use with the ►account-opening◄ [initial] disclosures and as an annual disclosure or, at the creditor's option, [with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. ►For home equity plans subject to the requirements of § 226.5b, at the creditor's option,] a creditor either may use G–3 or G–3(A), and for creditors that use the short form, G–4 or G–4(A). For open-end plans not subject to the requirements of § 226.5b, creditors may use G–3(A) and G–4(A).◄ Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * * *

5. *Model G–10(A), sample►s◄ G–10(B) and [model] G–10(C) ►, model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B) and 17(C)◄* . i. Model G–10(A) and sample►s◄ G–10(B) ►and G–10(C)◄ illustrate, in the tabular format, [all of] the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. [Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate.] Model G–10 ►(D)◄ [(C)] ►and sample G–10(E)◄ illustrate[s] the tabular format disclosure for charge card applications and solicitations and reflects [all of] the disclosures in the table. ►Model G–17(A) and samples G–17(B) and G–17(C) illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures.◄

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G 10(A)►, G–10(D) ◄and ►G–17(A)◄. [The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.] While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings [and disclosures] other than those in the forms (with an exception relating to the use of ''grace period'' ►''penalty APR'', and in relation to required insurance, or debt cancellation or suspension coverage, the term ''required'' and the name of the product◄) if they are clear and concise and are substantially similar to the headings [and disclosures] contained in model forms.

►iii. Models G–10(A) and G–17(A) contain two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3) and § 226.6(b)(4)(iii)(D). If a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge.'' Other minimum finance charges should be disclosed under the heading ''Minimum Charge.''

iv. Models G–10(A), G–10(D) and G–17(A) contain two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(4) disclosures, samples G–10(B), G–10(C), G–17(B) and G–17(C) are designed to be printed on an 8 x 14 sheet of paper. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Ariel font style, except for the purchase annual percentage rate which is shown in 16-point type);

B. Sufficient spacing between lines of the text;

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose three components: The applicable balance transfer rate, a cross reference to the balance transfer fee, and a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: the late-payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables;

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text; and

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages issuers to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.◄

6. *Model[s] G–11 [and G–12].* Model G–11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public. [Model G–12 is a model clause for the disclosure required under § 226.5a(f) when a charge card accesses an open-end plan offered by another creditor.]

7. *Models G–13(A) and G–13(B).* These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G–13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.

►8. *Samples G–18(A)–(F).* For home equity plans subject to the requirements of § 226.5b, if a creditor chooses to comply with the requirements in § 226.7(b), the creditor may use Samples G–18(A)–(F) to comply with these requirements, as applicable.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: May 23, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 07–2656 Filed 6–13–07; 8:45 am]

BILLING CODE 6210–01–P

Reader Aids

Federal Register

Vol. 72, No. 114

Thursday, June 14, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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 JUNE 14, 2007

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Government property; published 5-15-07

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
West Virginia; published 5-15-07

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Government property; published 5-15-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
Louisiana; published 3-28-07

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Lake St. Clair, Grosse Pointe Farms, MI; published 6-15-07

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:
Cost Accounting Standards Board—
Acquisition threshold changes; published 6-14-07

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Government property; published 5-15-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
General Electric Co.; published 5-10-07

Standard instrument approach procedures; published 6-14-07

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Business electronic filing and burden reduction; facilitation; published 6-14-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

General administrative regulations:
Non-compliance; administrative remedies; comments due by 6-18-07; published 5-18-07 [FR E7-09418]

AGRICULTURE DEPARTMENT

Farm Service Agency

Rural Business Enterprise Grant Program; comments due by 6-19-07; published 4-20-07 [FR 07-01922]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Rural Business Enterprise Grant Program; comments due by 6-19-07; published 4-20-07 [FR 07-01922]

AGRICULTURE DEPARTMENT

Rural Housing Service

Rural Business Enterprise Grant Program; comments due by 6-19-07; published 4-20-07 [FR 07-01922]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Rural Business Enterprise Grant Program; comments due by 6-19-07; published 4-20-07 [FR 07-01922]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Cook Inlet beluga whale; comments due by 6-19-07; published 4-20-07 [FR E7-07577]

Fishery and conservation management:
West Coast States and Western Pacific fisheries—
Pacific salmon; comments due by 6-19-07; published 4-20-07 [FR 07-01946]
Pacific salmon; correction; comments due by 6-19-07; published 4-24-07 [FR C7-01946]

Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-18-07; published 5-17-07 [FR 07-02417]

Marine mammals:
Southern resident killer whales; recovery plan; comments due by 6-20-07; published 3-22-07 [FR E7-05262]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Grants, other financial assistance, and nonprocurement agreements:
Nonprocurement debarment and suspension; OMB guidance; comments due by 6-22-07; published 5-23-07 [FR 07-02575]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Cost or pricing data; definition; comments due by 6-22-07; published 4-23-07 [FR 07-01927]

Personnel, military and civilian:
Indebtedness of military personnel; comments due by 6-18-07; published 4-17-07 [FR E7-07292]

EDUCATION DEPARTMENT

Elementary and secondary education:
Migrant Education Program; comments due by 6-18-07; published 5-4-07 [FR E7-08580]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Delaware; comments due by 6-18-07; published 5-17-07 [FR E7-09519]
Nevada; comments due by 6-18-07; published 4-17-07 [FR E7-07285]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aspergillus flavus AF36 on pistachio; comments due by 6-22-07; published 5-23-07 [FR E7-09729]

Water programs:
Water quality standards—
Puerto Rico; comments due by 6-18-07; published 5-17-07 [FR E7-09409]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
Colorado; comments due by 6-18-07; published 5-9-07 [FR E7-08907]
Texas; comments due by 6-18-07; published 5-9-07 [FR E7-08903]

Television broadcasting:
Video services provision in multiple dwelling units and other real estate developments; exclusive service contracts; comments due by 6-18-07; published 4-18-07 [FR E7-07254]

FEDERAL TRADE COMMISSION

Industry guides:
Advertising; endorsements and testimonials use; comments due by 6-18-07; published 3-20-07 [FR E7-05039]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Cost or pricing data; definition; comments due by 6-22-07; published 4-23-07 [FR 07-01927]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid:
Graduate medical education; costs and payments; comments due by 6-22-07; published 5-23-07 [FR 07-02576]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
North Carolina; comments due by 6-22-07; published 5-8-07 [FR E7-08723]

Regattas and marine parades:
East Coast Boat Racing Club power boat race; comments due by 6-21-07; published 5-22-07 [FR E7-09838]
Hampton Cup Regatta; comments due by 6-21-07; published 5-22-07 [FR E7-09843]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land

reclamation plan submissions:
West Virginia; comments due by 6-18-07; published 5-17-07 [FR E7-09506]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:
N-phenethyl-4-piperidone; control as list I chemical due to use for illicit manufacture of fentanyl; comments due by 6-22-07; published 4-23-07 [FR 07-02015]

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 6-18-07; published 5-8-07 [FR E7-08764]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Cost or pricing data; definition; comments due by 6-22-07; published 4-23-07 [FR 07-01927]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Mergers; related compensation arrangements; disclosure requirement; comments due by 6-22-07; published 4-23-07 [FR E7-07608]
Organization and operations—
Books, records and minutes; member inspection rights standardization and clarification; comments due by 6-22-07; published 4-23-07 [FR E7-07610]

NUCLEAR REGULATORY COMMISSION

Organization, functions, and authority delegations:
Nuclear Security and Incident Response Office; emergency preparedness program responsibilities; comments due by 6-20-07; published 5-21-07 [FR E7-09714]
Production and utilization facilities; domestic licensing:
Industry codes and standards; amended requirements; comments due by 6-19-07; published 4-5-07 [FR E7-06379]

PERSONNEL MANAGEMENT OFFICE

Internal Revenue Service broadbanding systems; criteria; comments due by 6-18-07; published 4-17-07 [FR E7-07255]

POSTAL REGULATORY COMMISSION

Practice and procedure:
Market dominant and competitive postal products; rate regulation; comment request; comments due by 6-18-07; published 5-25-07 [FR E7-10095]

SECURITIES AND EXCHANGE COMMISSION

Securities:
Broker-dealers; financial responsibility rules; comments due by 6-18-07; published 5-23-07 [FR E7-09833]

TRANSPORTATION DEPARTMENT

Individuals with disabilities:
Passenger vessels; accessibility guidelines; comments due by 6-22-07; published 4-13-07 [FR E7-06941]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
British Aerospace; comments due by 6-18-07; published 5-18-07 [FR E7-09603]
Cessna; comments due by 6-19-07; published 4-20-07 [FR E7-07519]
CFM International; comments due by 6-22-07; published 4-23-07 [FR E7-07504]
Cirrus Design Corp.; comments due by 6-18-07; published 5-17-07 [FR 07-02438]
Diamond Aircraft Industries GmbH; comments due by 6-18-07; published 5-17-07 [FR E7-09495]
MD Helicopters Inc.; comments due by 6-19-07; published 4-20-07 [FR E7-07438]
Pacific Aerospace Ltd.; comments due by 6-18-07; published 5-18-07 [FR E7-09597]
Turbomeca S.A.; comments due by 6-18-07; published 4-17-07 [FR E7-07115]
Area navigation routes; comments due by 6-21-07; published 5-7-07 [FR E7-08603]
Class E airspace; comments due by 6-21-07; published 5-22-07 [FR 07-02514]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline safety:
Unusually sensitive areas; protection from rural low-stress hazardous liquid pipelines; comments due by 6-18-07; published 5-18-07 [FR 07-02461]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Corporate reorganizations; interest continuity measurement; guidance; cross-reference; comments due by 6-18-07; published 3-20-07 [FR E7-05045]

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. 414/P.L. 110–29

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the ''Miguel Angel García Méndez Post Office Building''. (June 1, 2007; 121 Stat. 219)

H.R. 437/P.L. 110–30

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the ''Lino Perez, Jr. Post Office''. (June 1, 2007; 121 Stat. 220)

H.R. 625/P.L. 110–31

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the ''Atanacio Haro-Marin Post Office''. (June 1, 2007; 121 Stat. 221)

H.R. 1402/P.L. 110–32

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the ''Sergeant Dennis J. Flanagan Lecanto Post Office Building''. (June 1, 2007; 121 Stat. 222)

H.R. 2080/P.L. 110–33

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

Last List May 31, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.