AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

1–9–08 Wednesday
Vol. 73 No. 6 Jan. 9, 2008

Pages 1493–1814

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Federal Register

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Wednesday, January 9, 2008

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AL27

Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing final regulations on the locality pay program for General Schedule and certain other employees. Originally published on June 22, 2007 as an interim rule with a request for comments, the regulations added Whatcom County, WA, to the Seattle locality pay area effective with the first pay period that began on or after July 23, 2007, removed the reference to a January effective date for changes made by the President's Pay Agent in locality pay area boundaries, made a number of changes in the official names of locality pay areas to correspond to revised names of Metropolitan Statistical Areas and Combined Statistical Areas as established by the Office of Management and Budget, and provided notice and documentation of a number of changes in locality pay area boundaries that resulted from revisions in Metropolitan and Combined Statistical Areas. We received no comments on the interim rule and adopt the final rule without change.

DATES: *Effective on* February 8, 2008 we are adopting as a final rule the interim rule published at 72 FR 34361 on June 22, 2007.

Applicability Date: The regulations were applicable on the first day of the first pay period that began on or after July 23, 2007.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, and 5 CFR part 531, subpart F, authorize locality pay for General Schedule (GS) and certain other employees with official worksites in the 48 contiguous United States and the District of Columbia. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas.

On June 22, 2007 (72 FR 34361), OPM published an interim rule to add Whatcom County, WA, to the Seattle locality pay area, remove the reference to a January effective date for changes made by the President's Pay Agent in locality pay area boundaries, and make a number of changes in the official names of locality pay areas to correspond to revised names of Metropolitan Statistical Areas (MSAs) and Combined Statistical Areas (CSAs) as established by the Office of Management and Budget. The regulations also provided notice and documentation of a number of changes in locality pay area boundaries that resulted from the revisions in MSAs and CSAs. We received no comments on the interim rule and OPM is adopting the rule as final without changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the interim rule amending 5 CFR part 531 published at 72 FR 34361 on June 22, 2007, is adopted as a final rule without change.

[FR Doc. E8–125 Filed 1–8–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 27

[Docket No. OAG 120; A.G. Order No. 2926–2008]

Technical Amendments to the Regulations Providing Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of the Inspector General and Office of Attorney Recruitment and Management, Justice.

ACTION: Final rule.

SUMMARY: This rule makes several technical amendments to the Department of Justice regulations that provide whistleblower protection for Federal Bureau of Investigation (FBI) employees.

DATES: *Effective Date:* January 9, 2008.

FOR FURTHER INFORMATION CONTACT: Louis DeFalaise, Director, Office of Attorney Recruitment and Management, U.S. Department of Justice, Washington, DC 20530, (202) 514–8900.

SUPPLEMENTARY INFORMATION: This rule makes four technical amendments to relevant portions of the Department of Justice regulations that provide whistleblower protections to FBI employees under 28 CFR parts 0 and 27. Three of the amendments are made so that the provisions conform with the organizational changes brought about by a restructuring of the FBI's Office of Professional Responsibility (FBI–OPR) in 2004, whereby FBI–OPR's investigatory function was moved to the FBI's Inspection Division (FBI–INSD) and FBI–OPR retained its adjudicatory role. The fourth change is made to conform the regulations with the implementing statute.

First, ''the FBI Inspection Division (FBI–INSD) Internal Investigations Section,'' is added to the list of offices designated to receive a ''protected'' disclosure in 28 CFR 27.1(a) because that is the office now responsible for investigating and most likely to receive allegations of misconduct internal to the FBI.

Second, as presently worded, 28 CFR 27.1(b) provides that the Department's Office of Inspector General (OIG) or Office of Professional Responsibility (OPR) may refer whistleblower disclosures to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made. To reflect the current assignment of responsibility, ''FBI–OPR'' in § 27.1(b) is changed to ''FBI–INSD Internal Investigations Section.''

Third, like § 27.1(b), 28 CFR 0.29d(a) provides that OIG or DOJ–OPR may refer whistleblower disclosures to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made. ''FBI–OPR'' in § 0.29d(a) is changed to ''FBI Inspection Division (FBI–INSD) Internal Investigations Sections.''

Finally, this rule also makes a technical correction to 28 CFR 27.4(e)(1), so that the ''contributing factor'' standard in that provision is consistent with 5 U.S.C. 1221(e)(1), in accordance with Congress' directive in 5 U.S.C. 2303(c) that ''[p]rohibited personnel practices in the [FBI]'' be enforced ''in a manner consistent with applicable provisions of [5 U.S.C.] sections 1214 and 1221.'' Section 1221(e)(1) provides, in relevant part:

> [T]he Board shall order * * * corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—
>
> (A) the official taking the personnel action knew of the disclosure; and (B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

The rule will change the third ''or'' in § 27.4(e)(1) to ''and'' in order to track this statutory language.

Administrative Procedure Act

This rule relates to matters of agency personnel, organization, and procedure, and is therefore exempt from the requirements of notice and comment and a 30-day delay in the effective date of 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federal summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

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

This action pertains to agency personnel, organization, and procedure and does not substantially affect the rights or obligations of non-agency parties. Accordingly it is not a ''rule'' for the purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

The Department has determined that this action pertains to agency personnel, organization, and procedure and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Parts 0 and 27

Government employees; Justice Department; Organization and functions (Government agencies); Whistleblowing.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, parts 0 and 27 of title 28 of the Code of Federal Regulations are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority for citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Subpart E–4—Office of the Inspector General

■ 2. Revise paragraph (a) of § 0.29d to read as follows:

§ 0.29d Whistleblower Protection for FBI employees.

(a) *Protected disclosures by FBI employees.* Disclosures of information by an FBI employee that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety are protected disclosures when they are reported as provided in § 27.1 of this chapter. Any office or official (other than the OIG or DOJ–OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or DOJ–OPR. The OIG or DOJ–OPR may refer such allegations to FBI Inspection Division (FBI–INSD) Internal Investigations Section for investigation unless the Deputy Attorney General determines that such referral shall not be made.

* * * * *

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

■ 3. The authority for citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

■ 4. Revise § 27.1 to read as follows:

§ 27.1 Making a protected disclosure.

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI–INSD) Internal Investigations Section (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, the disclosure will be a ''protected disclosure'' if the person making it reasonably believes that it evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Any office or official (other than the OIG or OPR) receiving a protected disclosure shall promptly report such disclosure to the OIG or OPR for investigation. The OIG and OPR shall proceed in accordance with procedures establishing their respective jurisdiction. The OIG or OPR may refer such allegations to FBI–INSD Internal Investigations Section for investigation unless the Deputy Attorney General determines that such referral shall not be made.

■ 5. Revise paragraph (e)(1) of § 27.4 to read as follows:

§ 27.4 Corrective action and other relief; Director, Office of Attorney Recruitment and Management.

* * * * *

(e)(1) The Director shall determine, based upon all the evidence, whether a protected disclosure was a contributing factor in a personnel action taken or to be taken. Subject to paragraph (e)(2) of this section, if the Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, the Director shall order corrective action as the Director deems appropriate. The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure and that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

* * * * *

Dated: December 28, 2007.

Michael B. Mukasey,

Attorney General.

[FR Doc. 08–7 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–PB–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD07–07–107]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Mile 131.8, Clearwater, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations governing the Belleair Beach Bridge, Gulf Intracoastal Waterway, mile 131.8, Clearwater, Florida. This rule will allow the bridge to open on signal, except that from 7 a.m. to 7 p.m. this bridge will open on the hour and half-hour. This action is necessary for workers' safety and will assist in expediting the construction of the new bridge.

DATES: This rule is effective February 8, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [Docket No. CGD07–07–107] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3028, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Administration Branch, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 18, 2007, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, mile 131.8, Clearwater, FL in the **Federal Register**, 72 FR 33423–33425. We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The existing regulation of the draw requires that the Belleair Beach Bridge, mile 131.8, Clearwater, FL shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

Due to the construction of the new Belleair Beach high level fixed bridge, ECDriver, representing the owner of the bridge, requested that the Coast Guard change the current operation of the Belleair Beach Bridge. The bridge will be required to open twice an hour from 7 a.m. to 7 p.m. In addition, the waterway may be restricted or closed for short periods to allow for construction of the new bridge. Exact times and dates of any waterway restrictions and closures and bridge restrictions will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the bridge will be opened as soon as possible. This regulation is necessary for workers safety and will assist in expediting construction of the new bridge. Once the new Belleair Beach high level fixed bridge is near completion, we will propose to remove the regulation for the old drawbridge, as it will no longer be necessary.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking (NPRM). For this reason no changes were made to the proposed regulation.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Gulf Intracoastal Waterway in the vicinity of the Belleair Beach Bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the openings schedule would not have a significant impact on a substantial number of small entities. Although bridge openings will be restricted, vessel traffic will still be able to transit the Gulf Intracoastal Waterway pursuant to the revised opening schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.287(i) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(i) The draw of the Belleair Beach Drawbridge, mile 131.8, Clearwater, FL shall open on signal, except that from 7 a.m. to 7 p.m., the bridge shall open on the hour and half-hour.

* * * * *

Dated: December 10, 2007.

William D. Lee,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard.

[FR Doc. E8–191 Filed 1–8–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2001–0017; FRL–8502–3]

RIN 2060–AO59

Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$—Correcting and Simplifying Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA recently finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$) are met. These changes were made in support of revisions to the NAAQS for particulate matter (PM) that were finalized in the same rulemaking. After publication, EPA discovered an inadvertent omission in the rule text explaining the procedures for calculating the key statistic (98th percentile) involved with determining compliance with the 24-hour $PM_{2.5}$ standard in locations where extra samples of $PM_{2.5}$ in ambient air were taken above the specified sampling frequency. If the error in the regulatory text is left unchanged, the resulting statistic for calculating compliance with the 24-hour $PM_{2.5}$ standard would be biased low at some samplers, leading to potentially incorrect determinations that an area was attaining the NAAQS. In this direct final action, EPA is correcting this error. The correction involves the replacement of the currently used statistical formula and instructions with a simpler look-up table approach which is easier for readers to understand and which retains the intended numerical consistency with EPA's historic practice.

DATES: This rule is effective on April 8, 2008 without further notice, unless EPA receives adverse comment by February 8, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2001–0017 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Review of the National Ambient Air Quality Standards (NAAQS) for Particul0ate Matter (PM), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., EPA Headquarters Library, Room 3334, EPA West Building, 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.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2001–0017. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at: *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 *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 Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM) Docket, EPA/DC, EPA West Building, EPA Headquarters Library, Room 3334, Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Mr. Lewis Weinstock, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3661; fax number: (919) 541–1903; e-mail address: *weinstock.lewis@epa.gov.* For technical questions, please contact Mr. Mark Schmidt, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (C304–04), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–1903; e-mail address: *schmidt.mark@epa.gov.*

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I. Why Is EPA Using a Direct Final Rule?

The EPA is publishing this rule to correct and simplify 40 CFR part 50 to Appendix N, Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$, without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. The change does not alter the regulatory requirements on affected entities that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006 (71 FR 61144). The amended rule also expresses EPA's actual intentions, as explained in that rulemaking. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as a proposed rule if EPA receives significant adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Federal government	924110	Federal agencies that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data.
State/territorial/local/tribal government	924110	State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Authority

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS and supporting appendices detailing associated Federal Reference Methods and NAAQS interpretation (data handling) procedures.

Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list ''air pollutants'' that ''in his judgment, may reasonably be anticipated to endanger public health and welfare'' and whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those that are listed. Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *.''

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.''

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 10, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

V. Overview of the October 17, 2006 NAAQS Rule Changes

On October 17, 2006 (71 FR 61144), EPA amended the primary and secondary NAAQS for PM to provide increased protection of public health and welfare by revising the NAAQS for $PM_{2.5}$ and PM_{10} (generally referring to particles less than or equal to 10 micrometers (μm) in diameter). The rule amendments also modified the data handling procedures associated with the PM_{10} and $PM_{2.5}$ NAAQS (Appendices K and N of part 50, respectively). Appendix K and N describe the procedures and equations for determining whether a monitoring site

meets the PM_{10} and $PM_{2.5}$ NAAQS, respectively. Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$) was revised to incorporate the revised 24-hour NAAQS level (i.e., 35 μg/m³), and also to make several notable enhancements to the previous data handling conventions and computations (adopted at 62 FR 38755, July 18, 1997). These enhancements expanded the existing instructions to include relevant details for certain special cases previously addressed only in a 1999 EPA guidance document.[2] EPA meant to make the rule text more explicit in order to avoid regulatory ambiguity in these special cases. The special cases addressed in the 1999 EPA guidance are situations in which a monitoring agency has performed ''make-up'' or ''supplemental'' sampling of $PM_{2.5}$. The 1999 guidance, but not the previous version of Appendix N, provided details about how these samples could be taken into account in the calculation of design values used for determining whether areas are in compliance with the 24-hour $PM_{2.5}$ NAAQS.

The monitoring network used for determining compliance with the $PM_{2.5}$ NAAQS is currently based solely on filter-based samplers that typically operate on a 1-in-3 day sampling frequency.[3] Such filter-based samplers can malfunction resulting in missed or invalidated samples. The 1999 guidance encouraged monitoring agencies to collect make-up samples[4] for such lost data, and to use the make-up data in the calculation of the design values for the monitoring site. Monitoring agencies may also collect supplemental samples on days falling between required sampling days for local purposes, such as to better understand the nature and causes of a multi-day $PM_{2.5}$ episode. The original (1997) Appendix N did not provide explicit procedures addressing make-up or supplemental samples. The 1999 guidance suggested procedures for calculating design values in these cases which would ensure the appropriate treatment of such make-up and supplemental samples in the calculation of $PM_{2.5}$ 24-hour standard design values.

As noted in the preamble to the October 17, 2006 NAAQS rulemaking, EPA intended to incorporate into regulation $PM_{2.5}$ data handling procedures that previously had only been stated in guidance. 71 FR at 61211. In the course of making these intended changes, however, an error was made in section 4.5 of Appendix N dealing with procedures and equations for calculating the 24-hour $PM_{2.5}$ NAAQS under certain conditions. As described in the following section, this action was inadvertent, contrary to EPA's stated intentions, and necessitates correction.

VI. This Action

EPA is amending Appendix N in this action to correct the Agency's inadvertent error. As a result, the procedures in Appendix N will give results that will be identical to the intended formula (instead of the formula that was misstated in the October 2006 rulemaking) and also to the previous method that had been recommended in EPA guidance. In addition, this action simplifies the procedures for calculating 24-hour $PM_{2.5}$ design values.

As noted, EPA intended in the October 2006 final rule to codify the 1999 guidance's procedure for avoiding a bias that could be introduced into calculations of the 98th percentile concentration if supplemental samples are unaccounted for in the statistical calculations. For example, if supplemental ambient samples were taken during periods of low $PM_{2.5}$ concentrations, the annual[5] 98th percentile value could be biased low using the previous (1997) Appendix N procedures compared with the statistic that would have been generated (using that same procedure) if supplemental samples were not taken or considered. To minimize this bias, the 1999 guidance and the October 2006 version of Appendix N based the annual 98th percentile calculation on the creditable[6] number of monitoring samples as defined in section 1(c) of the October 2006 version of Appendix N to 40 CFR part 50.[7]

In the 2006 rule, EPA intended to encompass certain relevant details previously addressed only in the 1999 guidance by expanding the existing instructions in the text of Appendix N. The EPA's 1999 guidance document recommended procedures for calculating regular annual $PM_{2.5}$ 98th percentile values for two distinct situations. Chapter 1 of the guidance document addressed a monitoring site which had sampled solely on official required sample days. One method for this situation simply reiterated the formula finalized in 1997 accompanied by an example. This formula utilized a generic sample count (''n'') which was only appropriate when no ''extra'' (non-scheduled) samples were taken at the monitoring site during the year. An alternate method for the same situation used a table look-up approach, but again specified the generic ''n'' and, hence, was also only accurate when there were no extra samples taken during the year. Chapter 2 of the guidance document explained that modifications should be made to the stated techniques if there were extra samples present for a site-year. The guidance document recommended: (1) Utilizing a sample count that accounted for (specifically, subtracted) extra samples, and, (2) incorporating a term (specifically, adding) into the equation accounting for the extra sample count. This formula, which was misstated in the October 2006 rulemaking, also produced accurate results when no extra samples were present since the total ''n'' was the same as ''n'' minus ''extra samples'' or zero, and also the extra sample term in the equation was zero. Chapter 2 in the guidance document also noted that the table look-up approach in Chapter 1 still produced the desired result when extra samples were present if only the adjusted sample count (''n minus extra samples'') were used in lieu of the total sample count (''n''). This approach also produced accurate results whether extra samples were present or not.

In the October 2006 revisions to Appendix N, EPA intended to incorporate the ''extra sample''

[2] Guideline on Data Handling Conventions for the PM NAAQS, EPA–454/R–99–008, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, April 1999. *http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf.*

[3] 40 CFR 58.12(d) describes the required operating schedules for manual $PM_{2.5}$ samplers. Although the majority of such samplers must operate on a 1-in-3 day operating schedule, a subset of samplers is required to operate on a daily schedule, and samplers that are collocated with a continuous operating $PM_{2.5}$ monitor may be eligible for a reduction to 1-in-6 days sampling if approved by the Regional Administrator.

[4] Make-up samples are samples taken to replace missed or invalidated required scheduled samples. Make-up samples can be made by either the primary or the collocated instruments. Make-up samples are either taken before the next required sampling day or exactly one week after the missed (or voided) sampling day. The guidance also made other suggestions regarding make-up sampling practices.

[5] The term ''annual 98th percentile value'' refers to a single-year statistic required for the calculation of 24-hour $PM_{2.5}$ design values and should not be confused with procedures required for calculation of the annual form of the $PM_{2.5}$ standard that are not referenced or modified by this rulemaking.

[6] Creditable samples are samples that are given credit for data completeness. They include valid samples collected on required sampling days and valid ''make-up'' samples taken for missed or invalidated samples on required sampling days.

[7] The EPA notes that most sites do not take supplemental samples; hence, the total number of samples is generally equal to the creditable number of samples. Also, EPA notes that the collection of supplemental samples has a negligible impact on the determination of attainment for the annual $PM_{2.5}$ NAAQS since the metric for that standard is weighted by quarter. Furthermore, data completeness, an integral consideration for evaluating attainment of a NAAQS, is based solely on creditable samples.

adjustment logic into the existing equation method (71 FR at 61211). The sample count reference was modified (essentially changing ''n'' to ''n minus extra samples'') but the ''extra sample'' term was inadvertently omitted from equation 5 of section 4.5 (71 FR at 61229). That omission would cause significant miscalculations to the annual 98th percentile value when extra samples are present if the procedure were explicitly followed. The presence of extra samples with the misstated formula would result in a low bias in ascertaining the single-year 98th percentile statistic, as well as in determining the resulting $PM_{2.5}$ NAAQS comparison metric (24-hour design value) based on the three-year average of 98th percentile statistics. If implemented as explicitly stated, the misstated formula would improperly weaken the stringency of the 24-hour $PM_{2.5}$ NAAQS by showing sites and areas to be in attainment of the NAAQS when they were actually violating the standard. This situation would result in the 24-hour standard no longer being sufficiently stringent in those areas to provide requisite protection to public health and welfare, in violation of the fundamental requirement for establishing NAAQS in section 109(b) of the Act.

For this direct final rule, EPA considered two possible approaches to correct Appendix N. The first would be to correct equation 5 in Appendix N, section 4.5 by adding a term and footnote indicating that the number of extra samples, if taken, would have to be added to the current equation result (i.e., 1 plus the integer part of the product of 0.98 and the creditable number of samples) to determine where in the ascending data distribution to select the 98th percentile value. Such a correction would have restored EPA's intention of preserving numerical consistency with previous practice in calculating the related metrics for 24-hour $PM_{2.5}$ design values, but would also have preserved a set of procedures that is sensitive to the presence of extra samples and is hard to apply without providing relatively complex instructions.

The second possible approach would be to incorporate a table look-up method into Appendix N instead of using an equation. The direct final rule uses this approach. The EPA believes that the incorporation of a table look-up method into the Appendix N procedures provides a simpler means for calculating 98th percentile values by employing a more intuitive descending sort procedure that is unaffected by the presence of extra samples in the data distribution being examined. For example, if the annual number of creditable samples at a 1-in-3 day monitor is 125, then the appropriate 98th percentile value is the third maximum value in the descending sort distribution as noted in the table. If a 1-in-6 day monitor has recorded 50 creditable samples in a year, then the 98th percentile value is the first maximum value in the descending sort distribution.

Accordingly, the rule language of section 4.5(a)(1) of 40 CFR part 50, Appendix N is amended to replace equation 4.5 with a data look-up table (table 1) that determines where in the descending sorted data distribution the 98th percentile value is located. EPA is also adding rule text to 4.5(a)(1) (labeled ''Regular procedure for identifying annual 98th percentile values'' in the rule) to describe the procedures for performing the descending sort distribution and for determining the appropriate range for selecting the correct 98th percentile value based on the creditable number of samples.

To reiterate, this direct final rule both eliminates the erroneous terms in the equation, and replaces the equation-based procedure for determining the 98th percentile concentration with a table look-up approach that is equivalent to the intended equation-based procedure, because the table look-up approach is both correct and much easier to understand and execute. In fact, several public comments received on the proposed Appendix N procedure (the proposal underlying the 2006 final rule) for determining 98th percentiles noted that the treatment of extra samples (within that procedure) was complex, confusing, and difficult to program. Moreover, EPA believes that the equation-based procedure itself, especially when the extra sample adjustment is properly incorporated, is more indirect and hence more confusing than necessary. EPA's 1999 guidance perhaps contributed to the confusion by describing multiple methods which could be used for calculating the statistical metric. Also, the equation-based procedure promulgated in 1997 and described in the 1999 guidance utilized an ascending sorted data distribution which created another source of confusion. Descending sorts are generally utilized more frequently than ascending ones when characterizing air quality; for example, other criteria pollutant NAAQS focus on a fourth maximum concentration or a second maximum concentration. The alternate 98th percentile calculation method outlined in the 1999 guidance—the table look-up approach—utilizes this more intuitive descending sort. EPA based the 1999 guidance on a descending sort since it was thought to be more comprehensible. In addition (as outlined in the 1999 guidance), when extra samples were present at a site in a given year, the promulgated equation-based procedure for the 98th percentile calculation required a critical adjustment (an added term) to the associated equation. (As noted earlier, this critical adjustment is what was omitted from equation 4.5 of Appendix N in the 2006 amendments.) However, as correctly stated in the 1999 guidance, when extra samples are present and the table look-up approach is utilized, no such adjustment is necessary. Thus, in conclusion and in retrospect, it would have been better if EPA had proposed and promulgated the table look-up approach. Now afforded a second opportunity because of the need to address the error of the missing term in the equation-based procedure, EPA is opting to switch to the table look-up approach in this rulemaking.

EPA notes the retention of an equation-based procedure (equation 5 of section 4.5(a)(2) of 40 CFR part 50, Appendix N) to account for sites that operate on an approved seasonal sampling schedule. An equation-based approach is necessary to account for the different number of days present in ''High'' and ''Low'' seasons.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There is no information collection requirement directly associated with revisions to a NAAQS or supporting appendices under section 109 of the CAA.

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.

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.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

The correcting and simplifying change does not create additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006. The rule change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$). Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The correcting and simplifying change does not create additional regulatory requirements.

E. Executive Order 13132: Federalism

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

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The change being made only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$); thus, Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. The change being made only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$). Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23,1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because, while it is based on the need for monitoring data to characterize risk, this direct final rule itself does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act

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

This action does not involve any new technical standards for environmental monitoring and measurement. Ambient air concentrations of $PM_{2.5}$ are currently measured by the Federal reference method in 40 CFR part 50, Appendix L (Reference Method for the Determination of Fine Particulate as $PM_{2.5}$ in the Atmosphere) or by Federal Reference Method or Federal Equivalent Method that meet the requirements in 40 CFR part 53.

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

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

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rule merely amends the October 17, 2006, final PM NAAQS rule (71 FR 61144) by correcting and simplifying existing $PM_{2.5}$ data handling conventions and computations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on April 8, 2008.

List of Subjects in 40 CFR Part 50

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 29, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 50 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Appendix N is amended by:
■ a. Revising section 2.0(c);
■ b. Revising section 4.2(c); and
■ c. Revising section 4.5, as follows:

Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

* * * * *

2.0 Monitoring Considerations

* * * * *

(c) Section 58.12 of this chapter specifies the required minimum frequency of sampling for $PM_{2.5}$. Exceptions to the specified sampling frequencies, such as a reduced frequency during a season of expected low concentrations (i.e., ''seasonal sampling''), are subject to the approval of EPA. Annual 98th percentile values are to be calculated according to equation 5 in section 4.5 of this appendix when a site operates on a ''seasonal sampling'' schedule.

* * * * *

4.2 24-Hour $PM_{2.5}$ NAAQS

* * * * *

(c) The procedures and equations for calculating the 24-hour standard design values are given in section 4.5 of this appendix.

* * * * *

4.5 Procedures and Equations for the 24-Hour $PM_{2.5}$ NAAQS

(a) When the data for a particular site and year meet the data completeness requirements in section 4.2 of this appendix, calculation of the 98th percentile is accomplished by the steps provided in this subsection. Table 1 of this appendix shall be used to identify annual 98th percentile values, except that where a site operates on an approved seasonal sampling schedule, equation 5 of this appendix shall be used instead.

(1) *Regular procedure for identifying annual 98th percentile values.* Identification of annual 98th percentile values using the regular procedure (table 1) will be based on the creditable number of samples (as described below), rather than on the actual number of samples. Credit will not be granted for extra (non-creditable) samples. Extra samples, however, are candidates for selection as the annual 98th percentile. [The creditable number of samples will determine how deep to go into the data distribution, but all samples (creditable and extra) will be considered when making the percentile assignment.] The annual creditable number of samples is the sum of the four quarterly creditable number of samples.

Procedure: Sort all the daily values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]).

In this case, x[1] is the largest number and x[n] is the smallest value.) The 98th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of table 1, determine the appropriate range (i.e., row) for the annual creditable number of samples for year y (cn_y). The corresponding ''n'' value in the right column identifies the rank of the annual 98th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.98,\ y}$ = the nth largest value.

TABLE 1

Annual creditable number of samples for year "y" (cn_y)	$P_{0.98,\ y}$ is the nth maximum value of the year, where n is the listed number
1–50	1
51–100	2
101–150	3
151–200	4
201–250	5
251–300	6
301–350	7
351–366	8

(2) Formula for computing annual 98th percentile values when sampling frequencies are seasonal.

Procedure: Calculate the annual 98th percentiles by determining the smallest measured concentration, x, that makes W(x) greater than 0.98 using equation 5 of this appendix:

Equation 5

$$W(x) = \frac{d_{High}}{d_{High} + d_{Low}} F_{High}(x) + \frac{d_{Low}}{d_{High} + d_{Low}} F_{Low}(x)$$

Where:

d_{High} = number of calendar days in the ''High'' season;

d_{Low} = number of calendar days in the ''Low'' season;

$d_{High} + d_{Low}$ = days in a year; and

$$F_a(x) = \frac{\text{number of daily values in season a that are } \leq x}{\text{number of daily values in season a}}$$

Such that ''a'' can be either ''High'' or ''Low''; ''x'' is the measured concentration; and ''$d_{High}/(d_{High} + d_{Low})$ and $d_{Low}/(d_{High} + d_{Low})$'' are constant and are called seasonal ''weights.''

(b) The 24-hour standard design value is then calculated by averaging the annual 98th percentiles using equation 6 of this appendix:

Equation 6

$$P_{0.98} = \frac{\sum_{y=1}^{3} P_{0.98,\ y}}{3}$$

(c) The 24-hour standard design value (3-year average 98th percentile) is rounded according to the conventions in section 4.3 of this appendix before a comparison with the standard is made.

[FR Doc. 07–5954 Filed 1–8 –08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0541; FRL–8343–5]

Difenoconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes, increases, and removes tolerances for residues of difenoconazole and also establishes tolerances for combined residues of difenoconazole and its metabolite, CGA-205375, in or on various commodities. In addition, this regulation revokes tolerances for secondary residues in poultry, fat, meat, and meat byproducts. Syngenta Crop Protection, Inc., requested these tolerances under the Federal, Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 9, 2008. Objections and requests for hearings must be received on or before March 10, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0541. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: *whitehurst.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are

not limited to those engaged in the following activities:

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document?

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0541 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 10, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0541, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of August 22, 2007 (72 FR 47010–47012) (FRL–8142-5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6E7120 and PP 6F7115) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petitions requested that 40 CFR 180.475 be amended by establishing a tolerance for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1*H*-1,2,4-triazole, in or on fruit, pome, group 11 at 0.6 parts per million (ppm) (PP 6F7115); vegetable, fruiting, group 8 at 0.5 ppm (PP 6F7115); vegetables, tuberous and corm, subgroup 1C at 0.02 ppm (PP 6F7115); sugar beet roots at 0.3 ppm (PP 6F7115); sugar beet tops at 7.0 ppm (PP 6F7115); and imported whole papaya fruit at 0.3 ppm (PP 6E7120). That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has determined that several of the proposed tolerances need to be raised, lowered, or revoked. Additionally, EPA also determined that the pesticide uses for the proposed tolerances would result in residues of difenoconazole and CGA-205375 in or on the egg; milk; fat, meat, meat byproducts; and liver of ruminants that need tolerances.

The need to revise the tolerance expression for livestock is based on the previously submitted ruminant metabolism studies, the new foliar uses, and the need to include CGA 205375 in the risk assessment. The uses on pome fruit, sugar beets, and tuberous and corm vegetables included potential cattle feedstuffs (cull potatoes, processed potato waste, sugar beet molasses, sugar beet pulp, and wet apple pomace), and therefore resulted in a greater potential for the transfer of residues to meat and milk.

For poultry, based on the calculated dietary burdens and the submitted feeding study data, the Agency concluded that the currently established tolerances for secondary residues in poultry, meat, fat and meat byproducts should be removed. Additionally, the tolerance for residues of difenoconazole in eggs should be altered to include residues of CGA-205375 and the tolerance level should be increased to 0.10 ppm (to account for CGA-205375).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data

and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of difenoconazole as revised by EPA. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by difenoconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established for this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0541 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for difenoconazole used for human risk assessment can be found at *http://www.regulations.gov* in the document entitled ''Difenoconazole in/on Fruiting Vegetables, Pome Fruit, Sugar Beets, Tuberous and Corm Vegetables, and Imported Papaya,'' Health Effects Division (HED) Risk Assessment on page 13 in docket ID number EPA–HQ–OPP–2007–0541.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to difenoconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing difenoconazole tolerances in (40 CFR 180.475). EPA assessed dietary exposures from difenoconazole in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) insert 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer*. A cancer dietary exposure assessment was not conducted for difenoconazole because the cancer NOAEL is higher than the chronic NOAEL; therefore, the chronic dietary risk estimate is more protective.

iv. *Anticipated residue and percent crop treated (PCT) information*. The Agency did not use anticipated residue estimates or PCT information.

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

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of difenoconazole are 0.00128 parts per billion (ppb) for acute groundwater and 0.00108 ppb for chronic groundwater. The EECs for surface water are estimated to be 13.3 ppb and 9.43 ppb for 1-in-10 year annual peak and 1-in-10 year annual average concentrations respectively.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. In this assessment, 1-in-10–year annual peak (13.3 ppb) and 1-in10–year annual mean (9.43 ppb) residue values were used for acute and chronic dietary exposure assessments respectively.

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

Difenoconazole is currently registered for the following residential non-dietary sites: Ornamentals. EPA assessed residential exposure using the following assumptions: Residential pesticide handlers will be exposed to short-term duration (1–30 days only). The dermal and inhalation (short-term) residential exposure was assessed for ''homeowners'' mixer/loader/applicator wearing short pants and short-sleeved shirts as well as shoes plus socks using garden hose-end sprayer, ''pump-up'' compressed air sprayer, and backpack sprayer. A MOE of 100 is adequate to protect residential pesticide handlers from exposures to difenoconazole. MOEs are >100; therefore are not of concern. With respect to residential

postapplication exposures, no significant postapplication exposure is anticipated from ornamentals by residents; therefore, no residential postapplication assessment was conducted.

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

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Difenoconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including difenoconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of UFs) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov*, docket ID number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional (10X) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, and pre-/postnatal exposure in the 2–generation reproduction toxicity study in rats. There was no evidence of abnormalities in the development of the fetal nervous system in the pre-/postnatal studies.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for difenoconazole is complete.

ii. There is no indication that difenoconazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that difenoconazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. Conservative ground and surface water modeling estimates were used. Similarly conservative residential SOPs were used to assess postapplication exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by difenoconazole.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 8% of the aPAD for the population group all infants (<1 year old) receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to difenoconazole from food and water will utilize 56% of the cPAD for the population group (children 1–2). Based on the use pattern, chronic residential exposure to residues of difenoconazole is not expected.

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

Difenoconazole is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for difenoconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of

greater than or equal to 170, and are therefore not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The Agency believes residential pesticide handlers will be exposed to short-term duration (1–30 days) only. Therefore, intermediate-and long-term aggregate risk are not of concern.

5. *Aggregate cancer risk for U.S. population*. As explained in Unit III.C.1.iii., the chronic risk assessment is protective of any cancer risk for difenoconazole.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits (MRLs) have been established for difenoconazole.

C. Response to Comments

One comment was received from B. Sachau. Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to difenoconazole, including all anticipated dietary exposures and other exposures for which there is reliable information. This comment as well as her comments regarding animal testing have been responded to by the Agency on several occasions. For examples, see the **Federal Register** issues of January 7, 2005 (70 FR 1349) (FRL–7691–4) and October 29, 2004 (69 FR 63083) (FRL–7681–9).

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole in or on vegetable, fruiting, group 8 at 0.60 ppm; vegetable, tuberous and corm, subgroup 1C at 0.01 ppm; beet, sugar at 0.01 ppm; papaya (imported) at 0.30 ppm; apple, wet pomace 4.5 ppm; beet, sugar, dried pulp at 1.9 ppm; and potato, processed waste at 0.04 ppm. The tolerance for fruit, pome group 11 is increased from 0.6 ppm to 1.0 ppm. Tolerances for pome fruit, group 11 and barley, grain are established for domestic use. Tolerances for secondary residues in poultry, meat, fat, and meat byproducts are revoked. Tolerances as listed in the table of paragraph (a) in 40 CFR 180.475 are removed for milk, meat of cattle, hog, goat, horse, and sheep; meat byproduct (except liver) of cattle, hog, goat, horse, and sheep; fat of cattle, hog, goat, horse, and sheep; liver of cattle, hog, goat, horse, and sheep; and eggs. Tolerances for combined residues of CGA-205375 are established in or on milk at 0.01 ppm; meat of cattle, hog, goat, horse, and sheep at 0.05 ppm; meat byproduct (except liver) of cattle, hog, goat, horse, and sheep at 0.10 ppm; fat of cattle, hog, goat, horse, and sheep at 0.10 ppm; liver of cattle, hog, goat, horse, and sheep at 0.20 ppm; and eggs at 0.10 ppm; and are listed in a table in newly created paragraph (a)(2) of 40 CFR 180.475.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 28, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.475 is amended by revising paragraph (a) to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1*H*-1,2,4-triazole, in or on the following commodities:

Commodity	Parts per million
Apple, wet pomace	4.5
Banana[1]	0.2
Barley, grain	0.1
Barley, hay	0.05
Barley, straw	0.05
Beet, sugar	0.01
Beet, sugar, dried pulp	1.9
Canola, seed	0.01
Corn, sweet, forage	0.01
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.01
Cotton, gin byproducts	0.05
Cotton, undelinted seed	0.05
Fruit, pome group 11	1.0
Grape[1]	0.10
Papaya[1]	0.30
Potato, processed waste	0.04
Rye, grain[1]	0.1
Vegetable, fruiting, group 8	0.60
Vegetable, tuberous and corm, subgroup 1C	0.01

[1] There are no U.S. registrations.

(2) Tolerances are established for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1*H*-1,2,4-triazole, and its metabolite, CGA-205375, 1-[2-chloro-4-(4-chloro-phenoxy)phenyl]-2-[1,2,4]triazol-1-yl-ethanol, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, liver	0.20
Cattle, meat	0.05
Cattle, meat byproduct (except liver)	0.10
Eggs	0.10
Goat, fat	0.10
Goat, liver	0.20
Goat, meat	0.05
Goat, meat byproduct (except liver)	0.10
Hog, fat	0.10
Hog, liver	0.20
Hog, meat	0.05
Hog, meat byproduct (except liver)	0.10
Horse, fat	0.10
Horse, liver	0.20
Horse, meat	0.05
Horse, meat byproduct (except liver)	0.10
Milk	0.01
Sheep, fat	0.10
Sheep, liver	0.20
Sheep, meat	0.05
Sheep, meat byproduct (except liver)	0.10

* * * * *

[FR Doc. E8–15 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0093]; FRL–8344–3]

Mesotrione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mesotrione in or on berry, group 13; flax, seed; cranberry; lingonberry; millet, grain; millet, forage; millet, hay; and millet, straw. Syngenta Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 9, 2008. Objections and requests for hearings must be received on or before March 10, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0093. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; e-mail address: *montague.kathryn @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0093 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 10, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0093, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of April 26, 2006 (71 FR 24695) (FRL–8063–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7023) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC. The petition requested that 40 CFR 180.571 be amended by establishing tolerances for residues of the herbicide mesotrione, 2–[4- (methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on flax, meal/seed at 0.01 parts per million (ppm); millet, forage/grain at 0.01 parts per million (ppm); millet, hay/straw at 0.02 ppm; Berry group and cranberry at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, to harmonize with the Food and Feed Commodity Vocabulary (*http://www.epa.gov/opphed01/foodfeed/index.htm*) EPA has amended the commodity listing to read: Flax, seed at 0.01 ppm; millet, grain at 0.01 ppm; millet, forage at 0.01 ppm; millet, hay at 0.02 ppm; millet, straw at 0.02 ppm; berry, group 13 at 0.01 ppm, lingonberry at 0.01 ppm and cranberry at 0.02 ppm

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of mesotrione on flax, seed at 0.01 ppm; millet, grain at 0.01 ppm; millet, forage at 0.01 ppm; millet, hay at 0.02 ppm; millet, straw at 0.02 ppm; berry group 13 at 0.01 ppm, lingonberry at 0.01 ppm and cranberry at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by mesotrione as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as ''Mesotrione: Petition 6F7023 Human Health Risk Assessment for Proposed Section 3 New Uses on Berries, Cranberries, Millet, Flax, Grain Sorghum (Section 18)'' in that docket. Additionally, mesotrione toxicological data are discussed in the final rule published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes

used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

A summary of the toxicological endpoints for mesotrione used for human risk assessment can be found at *http://www.regulations.gov* in document ''Mesotrione: Petition 6F7023 Human Health Risk Assessment for Proposed Section 3 New Uses on Berries, Cranberries, Millet, Flax, Grain Sorghum (Section 18)'' at page 16 in docket ID number EPA–HQ–OPP–2006–0093.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to mesotrione, EPA considered exposure under the petitioned-for tolerances as well as all existing mesotrione tolerances in (40 CFR 180.571). EPA assessed dietary exposures from mesotrione in food as follows:

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

No such effects were identified in the toxicological studies for mesotrione; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculutre (USDA) 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer*. Mesotrione was negative for carcinogenicity in feeding studies in rats and mice and was classified as ''not likely'' to be a human carcinogen. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

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

Based on the First Index Reservoir Screening Tool (FIRST) for dry harvested cranberry and a modified Interim Rice Model for wet harvested cranberry and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of mesotrione for chronic exposures are estimated to be 4.7 parts per billion (ppb) for surface water and 0.18 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.7 ppb was used to assess the contribution to drinking water.

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

Mesotrione is not registered for use on any sites that would result in residential exposure.

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

Mesotrione, pyrasulfotole, isoxaflutole and topramezone belong to a class of herbicides that inhibit the liver enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD), which is involved in the catabolism (metabolic breakdown) of tyrosine (an amino acid derived from proteins in the diet). Inhibition of HPPD can result in elevated tyrosine levels in the blood, a condition called tyrosinemia. HPPD-inhibiting herbicides have been found to cause a number of toxicities in laboratory animal studies including ocular, developmental, liver and kidney effects. Of these toxicities, it is the ocular effect (corneal opacity) that is highly correlated with the elevated blood tyrosine levels. In fact, rats dosed with tyrosine alone show ocular opacities similar to those seen with HPPD inhibitors. Although the other toxicities may be associated with chemically-induced tyrosinemia, other mechanisms may also be involved.

There are marked differences among species in the ocular toxicity associated with inhibition of HPPD. Ocular effects following treatment with HPPD inhibitor herbicides are seen in the rat but not in the mouse. Monkeys also seem to be recalcitrant to the ocular toxicity induced by HPPD inhibition. One explanation of this species-specific response in ocular opacity may be related to the species differences in the clearance of tyrosine. A metabolic pathway exists to remove tyrosine from the blood that involves a liver enzyme called tyrosine aminotransferase (TAT). In contrast to rats where ocular toxicity is observed following exposure to HPPD-inhibiting herbicides, mice and humans are unlikely to achieve the levels of plasma tyrosine necessary to produce ocular opacities because the activity of TAT in these species is much greater compared to rats. HPPD inhibitors (e.g., nitisinone) are used as an effective therapeutic agent to treat patients suffering from rare genetic diseases of tyrosine catabolism. Treatment starts in childhood but is often sustained throughout patient's lifetime. The human experience indicates that a therapeutic dose (1 milligrams/kilogram/day (mg/kg/day) dose) of nitisinone has an excellent safety record in infants, children and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine

levels; however, these effects are transient and can be readily reversed upon adherence to a restricted protein diet. This indicates that an HPPD inhibitor in and of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposure to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. The Agency continues to study the complex relationships between elevated tyrosine levels and biological effects in various species. Nonetheless, as a worst case scenario, EPA has assessed aggregate exposure to mesotrione based on ocular effects in rats. For similar reasons, a semi-quantitative screening cumulative assessment was conducted using the rat ocular effects and 100% crop treated information. The results of this screening analysis did not indicate a concern. In the future, assessments of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods. Therefore, EPA has not conducted cumulative risk assessment with other HPPD inhibitors. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is quantitative evidence of increased susceptibility of the young in the oral prenatal developmental toxicity studies in rats, mice, and rabbits and in the multi-generation reproduction study in mice and lack of a developmental neurotoxicity study in mice. Quantitative evidence of increased susceptibility was not demonstrated in the multi-generation reproduction study in rats. However, no NOAEL was established for parental or offspring systemic toxicity. There is evidence of a qualitative increase in susceptibility since the tyrosinemia observed in the young was much more severe than that observed in the adults.

3. *Conclusion*. There are 2 deficiencies in the mesotrione toxicity database. First, a Developmental Neurotoxicity Study has been required to assess the effects on the developing nervous/ocular system from exposed to mesotrione. Second, the mouse 2–generation reproduction study, on which the Reference Dose/ Population Adjusted Dose (RfD/PAD) is based failed to identify a NOAEL. In light of this data gap, the necessity of a reliance on a LOAEL to calculate the RfD/PAD, and the quantitative and qualitative evidence of increased susceptibility of the young discussed above, EPA is raising the 10X FQPA safety factor to the value of 30X.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. There were no effects observed in oral toxicity studies including developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, mesotrione is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food and water will utilize 51% of the cPAD for the population group (All Infants (<1 year old)). There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione.

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

Mesotrione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water.

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

Mesotrione is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Mesotrione is classified as a ''not likely'' to be carcinogenic in humans based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in the rat. Therefore, mesotrione is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues for the proposed crops.

V. Conclusion

Therefore, the tolerance is established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on flax, seed at 0.01 ppm; millet, grain at 0.01 ppm; millet, forage at 0.01 ppm; millet, hay at 0.02 ppm; millet, straw at 0.02 ppm; berry group 13 at 0.01 ppm, lingonberry at 0.01 ppm and cranberry at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and

Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 28, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.571 is amended by alphabetically adding the following commodities in the table in paragraph (a) to read as follows:

§ 180.571 Mesotrione; tolerances for residues.

(a) * * *

Commodity	Parts per million
Berry, group 13	0.01
* * *	* *
Cranberry	0.02
Flax, seed	0.01
Lingonberry	0.01
Millet, grain	0.01
Millet, forage	0.01
Millet, hay	0.02
Millet, straw	0.02

* * * * *

[FR Doc. E8–181 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0268; FRL–8345–8]

Poly(hexamethylenebiguanide) hydrochloride (PHMB); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the insecticide, Poly(hexamethylenebiguanide) hydrochloride (PHMB) on all food when residues are the result of lawful application of a food contact surface sanitizer containing PHMB as a sanitizer solution in food handling establishments when applied as a sanitizer. Arch Chemicals Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of PHMB.

DATES: This regulation is effective January 9, 2008. Objections and requests for hearings must be received on or before March 10, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0268. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only

available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: *heyward.adam@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 180.940(a) Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0268 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 10, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0268, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of December 21, 2005 (70 FR 75805) (FRL–7745-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5F6975) by Arch Chemical Inc.,1955 Lake Park Drive, Suite 100, Smyrna, GA 30080. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of Poly(hexamethylenebiguanide) hydrochloride. This notice included a summary of the petition prepared by the petitioner Arch Chemical Inc. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

A. Toxic Effects

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The

nature of the toxic effects are discussed in this unit.

There are adequate toxicology data available to characterize the toxicity of PHMB. PHMB is a severe eye irritant and is a moderate dermal irritant and sensitizer. Acute oral, inhalation and dermal toxicity are acute toxicity, category III, which requires the signal word caution to appear on the product label as defined in 40 CFR 156.64(3).

B. Toxic Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (NOAEL) from the toxicology study identified as appropriate for the risk assessment is used to estimate the toxicological level of concern (LOC).

The Agency's level of concern for residential PHMB dermal, inhalation and oral exposures is 100 (i.e. a margin of exposure (MOE) less than 100 exceeds the Agency's level of concern). The level of concern is based on 10x for interspecies extrapolation and 10x for intraspecies variability. A summary of the toxic endpoints for PHMB is listed in the following table.

TABLE 1—TOXICOLOGICAL ENDPOINTS FOR ASSESSING OCCUPATIONAL AND RESIDENTIAL EXPOSURES/RISK*

ExposureScenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 20 mg/kg/day UF = 100 Acute RfD = 0.2 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF= 0.2 mg/kg/day	Rabbit Developmental Study (MRID 42865901) LOAEL = 40 mg/kg/day based on a reduced number of litters and skeletal abnormalities.
Acute Dietary (General population including infants and children)	No appropriate single dose effect was identified for the general population.		
Chronic Dietary (All populations)	NOAEL = 20 mg/kg/day UF = 100 Chronic RfD = 0.2 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF= 0.2 mg/kg/day	Rabbit Developmental Study (MRID 42865901) LOAEL = 40 mg/kg/day Based on increased mortality, reduced food consumption, and clinical toxicity; Mouse Developmental Study (Report No. CTL/P/335, 1977 (cited in Report No. 003810, 1978. Section C-9)) LOAEL = 40 mg/kg/day Based on reduced body weight gain; and Rat Developmental Study (Report No. CTL/P/1262, 1976 (cited in Report No. 003810, 1978. Section C-11)) LOAEL = 50 mg/kg/day Based on reduced food consumption.
Short-Term Incidental Oral (1-30 days)	NOAEL = 20 mg/kg/day UF = 100	Residential LOC for MOE = 100	Rabbit Developmental Study (MRID 42865901) LOAEL = 40 mg/kg/day Based on the increased mortality, reduced food consumption, and clinical toxicity; Mouse Developmental Study (Report No. CTL/P/335, 1977 (cited in Report No. 003810, 1978. Section C-9)) LOAEL = 40 mg/kg/day;Based on reduced body weight gain; and Rat Developmental Study (Report No. CTL/P/1262, 1976 (cited in Report No. 003810, 1978. Section C-11)) LOAEL = 50 mg/kg/day Based on reduced food consumption.
Intermediate-Term Incidental Oral (1 - 6 months)	NOAEL = 20 mg/kg/day UF = 100	Residential LOC for MOE = 100	See Short-Term Incidental Oral Endpoint
Short-Term, Intermediate-Term and Long-Term Dermal Exposure	Dermal (or oral) study NOAEL= 150 mg/kg/day UF = 100 (Relative dermal absorption rate =100%)	Residential LOC for MOE = 100	80-Week Skin Painting Study – Mouse (MRIDs 00066475 and 00104796) LOAEL = 750 mg/kg/day based on decreased body weight and liver tumors.
Short-Term, Intermediate-Term and Long-Term Inhalation Exposure	An appropriate route-specific inhalation study is not available. The oral endpoint of 20 mg/kg/day with a target MOE of 100 (10x inter-species extrapolation, 10x intra-species variation) is used. An additional 10x route-to-route extrapolation is used to determine if a confirmatory inhalation toxicity study is warranted.		
Cancer (oral, dermal)	EPA has classified PHMB as having suggestive evidence of carcinogenicity but the evidence was too weak to warrant quantification of human cancer risk		

*UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = acute population adjusted dose (a = acute, c = chronic) RfD = reference dose, LOC = level of concern, MOE = margin of exposure

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

PHMB is an antimicrobial that is used as a hard surface sanitizer and may be in or on food processing equipment, premises of food processing plants, milk processing equipment, milk processing plants, eating establishments, food contact surfaces, adhesives, and slurries. The use of PHMB as an antimicrobial product on these various surfaces may result in pesticide residues in human food. Residues from treated surfaces can migrate to food that comes into contact with the treated surfaces which then can result in human ingestion.

1. *Food*. The Agency assessed acute and chronic dietary exposure from the use of PHMB as a disinfectant and food contact sanitizer on direct and indirect food-contact surfaces. This assessment calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI) using an FDA model (''Sanitizing Solutions: Chemical Guidelines for Food Additives Petition, January 1993''). The FDA model takes into account application rates, residual solution, area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight of the population exposed.

To calculate the EDI (estimated daily intake) values for PHMB when it is used as a sanitizer in public eating spaces, it was assumed that PHMB would be used at a concentration of 550 parts per million (ppm), the thickness of the PHMB residues on surfaces would be 1 mg per square centimeter of treated surface, and the surface area of the food contact surface being sanitized to which a person would be exposed on a daily basis is 4,000 cm^2 (which includes contact with treated silverware, china, and glass used by an individual who regularly eats three meals per day at an institutional or public facility). It was also assumed that 100% of the pesticide would migrate to food.

To calculate the EDI (estimated daily intake) values for PHMB when it is used in the food processing industry, it was also assumed to be used at a concentration of 550 ppm. However, specific to this scenario, the exposure estimates were calculated using the milk truck model that is described in the FDA document, ''Sanitizing Solutions: Chemistry Guidelines For Food Additive Petitions.'' This includes the assumption that estimates of sanitary exposure from use in dairy processing plants significantly exceed estimates based on other uses with food processing equipment and utensils. For the purpose of assessing risks stemming from food processing uses, parameters assuming a sanitized milk truck were used as the worst case scenario. The various input parameters, such as the size of the truck, internal surface area, residual thickness, and application rate of PHMB were used to calculate potential residues present in the truck per liter of food (i.e. milk).

For each dietary exposure assessment it was assumed that adults (both male and female) consume 3,000 grams of food a day and a child, 1,500 grams. This allowed for an estimation of the amount of PHMB that is anticipated to be present in an average adult's or child's daily intake from these uses, and in turn, the calculation of a daily dietary dose.

2. *Drinking water exposure*. The uses of PHMB are not expected to significantly contaminate drinking water sources. As provided in the PHMB Reregistration Eligibility Document, ''none of the uses associated with PHMB are expected to impact either surface or ground water resources.'' Therefore, the PHMB contributions for drinking water exposure are considered to be negligible and are not quantified.

B. Other Non-Occupational Exposure

The residential exposure assessment considers all potential non-occupational pesticide exposure, other than exposure due to residues in food or in drinking water. Exposures may occur during and after application as a hard surface disinfectant (e.g. walls, floors, tables, fixtures) and to swimming pools. Each route of exposure is assessed, where appropriate, and risk is expressed as a margin of exposure (MOE), which is the ratio of estimated exposure to an appropriate NOAEL.

Residential exposure may occur during application of PHMB to indoor hard surfaces (e.g., mopping, wiping, trigger pump sprays) and to swimming pools. The residential handler scenarios were assessed to determine dermal and inhalation exposures. Surrogate dermal and inhalation unit exposure values were estimated using Pesticide Handler Exposure Database (PHED) data and the Chemical Manufactures Association Anitmicrobial Exposure Assessment Study (USEPA, 1999) and the SWIMODEL 3.0 was utilized to conduct exposure assessments of pesticides found in swimming pools and spas (Versar, 2003). Note that for this assessment, EPA assumed that residential users complete all elements of an application (mix/load/apply) without the use of personal protective equipment.

The duration for most residential exposures is believed to be best represented by short-term duration (1 to 30 days). The short-term duration was chosen for this assessment because the residential handler and post-application scenarios are assumed to be performed on an episodic, not a daily basis.

Based on toxicological criteria and the potential for exposure, the Agency has conducted incidental oral, dermal and inhalation exposure assessments for PHMB residential use. As noted previously, MOEs greater than or equal to 100 are considered adequately protective for the residential exposure assessment.

Specific information on the residential exposure for PHMB can be found at *http://www.regulations.gov*, docket ID No. EPA–HQ–OPP–2005–0268.

V. Cumulative Effects

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

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

VI. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10x'') tenfold margin of safety for infants and children in the

case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10x when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no quantitative or qualitative evidence of increased susceptibility to the fetus following *in utero* exposure to PHMB in the prenatal developmental toxicity studies, and no quantitative or qualitative evidence of increased susceptibility to the offspring when adults are exposed to PHMB in the two-generation reproductive study. In each study, any development/reproductive effect observed occurred at doses equal to or higher than the doses at which maternal toxicity was observed. This, together with the nature of the effects seen in the studies has led the Agency to conclude that there is no evidence of increased susceptibility.

EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1x. That decision is based on the following findings:

i. The toxicity database for Poly(hexamethylenebiguanide) hydrochloride (PHMB) is complete for assessing risk to infants and children under the FFDCA.

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

iii. There is no evidence that PHMB results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the two-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated (CT) and tolerance-level residues and will not underestimate the exposure and risk. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by PHMB.

VII. Determination of Safety for U.S. Population, Infants and Children

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

1. *Acute and chronic risk*. EPA compares the estimated dietary exposures to an aPAD and a cPAD, both of which are 0.2 mg/kg/day for PHMB. Generally, a dietary exposure estimate that is less than 100% of the aPAD or cPAD does not exceed the Agency's levels of concern.

The antimicrobial indirect food use acute/chronic risk estimates from exposure to treated utensils and countertops as well as from food processing facility sanitation are below the Agency's level of concern. For adults females of child bearing age (13 to 49 years old), the cumulative (food utensils and food processing) acute and chronic dietary exposure risk estimates are 18.8% of the acute and chronic PADs. For children ages 3 to 5 years old, the most highly exposed population subgroup, the cumulative chronic dietary risk estimates are 37.2% of chronic PAD (there are no effects anticipated for the acute exposures). Therefore, dietary exposure estimates are below the Agency's level of concern for all population subgroups. Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues. Accordingly, EPA finds that exempting from the requirement of a tolerance will be safe.

2. *Non-occupational risk*. Aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Using the exposure assumptions described in this unit for other non-occupational exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs greater than or equal to 100 for the inhalation route of exposure and 100 for dermal exposure. Therefore, these levels of exposure are not of concern.

3. *Aggregate cancer risk for U.S. population*. EPA has classified PHMB as having no greater than suggestive evidence of carcinogenicity. The weight-of-the-evidence considerations for this classification are as follows:

i. A treatment-related statistically significant increase (trend and pair-wise) in vascular tumors (mainly benign) was seen in female rats at an oral dose that was considered to be adequate, but not excessive. This was considered the strongest evidence on the Agency's evaluation of PHMB.

ii. Oral exposure to male and female mice also resulted in treatment-related vascular tumors seen at an excessive dose. However, at the next highest dose level, which was considered adequate but not excessive, there was a slight, but not statistically significant, increase in this same tumor, which added to the Agency's concern for this tumor type.

iii. It is noted that dermal exposure to female mice resulted in an equivocal increase in vascular tumors seen at only an excessive dose.

iv. No treatment-related increase in any tumors was seen in male rats via the oral route or in male mice via the dermal route of exposure.

Based on the findings above, the Agency has determined that PHMB posed no greater than a negligible cancer risk.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to PHMB. Accordingly, EPA finds that exempting PHMB from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also

adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA has authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, PHMB may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method(s)

An analytical method for food is not needed. Food contact sanitizers are typically regulated by state health departments to ensure that the food industry is using these products in compliance with regulations in 40 CFR 180.940. The end use solution that is applied to the food contact surface is analyzed not food items that may come into contact with the treated surface. An analytical method is available to analyze the use dilution that is applied to food contact surfaces. The solution can be analyzed by use of the spectrophotometric method.

C. Existing Tolerances

There is no existing tolerance or exemption from tolerance for PHMB.

D. International Tolerances

No Codex, Canadian, or Mexican maximum residue limits (MRLs) have been established for any food uses at this time.

VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 18, 2007.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1280 is added to subpart D to read as follows:

§ 180.1280 Poly(hexamethylenebiguanide) hydrochloride (PHMB) exemption from the requirement of a tolerance.

Poly(hexamethylenebiguanide) hydrochloride (PHMB)(CAS Reg. No. 32289–58–0) is exempt from the requirement of a tolerance for residues of the antimicrobial in or on all food commodities when the residues are the result of the lawful application of a food contact surface sanitizer containing PHMB at 550 parts per million (ppm).

[FR Doc. E8–189 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0300; FRL–8346–3]

Zeta-cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of zeta-cypermethrin and its inactive R-isomers in or on Citrus (dried pulp, fruit and oil); oilseed commodities (seeds of borage, castor oil plant, Chinese tallow tree, crambe, cuphea, echium, euphorbia, evening primrose, flax, gold of pleasure, hare's-ear mustard, jojoba,

lesquerella, lunaria, meadowfoam, milkweed, mustard, niger seed, oil radish, poppy, rose hip, sesame, Stokes aster, sweet rocket, tallowwood, tea oil plant, and vernonia); oilseed, refined oils (refined oils of castor oil plant, Chinese tallowtree, euphorbia, evening primrose, jojoba, niger seed, rose hip, stokes aster, tallowwood, tea oil plant and vernonia); okra; rice, wild; and safflower, seed. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also deletes time-limited flax seed tolerances which are made redundant and unnecessary by establishment of the permanent tolerance on flax seed.

DATES: This regulation is effective January 9, 2008. Objections and requests for hearings must be received on or before March 10, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION)**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0300. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document?

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0300 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 10, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0300, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237-35242) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6E7132 and PP 6E7133) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540-6635. The petitions requested that 40 CFR 180.418 be amended by establishing tolerances for combined residues of the insecticide zeta-cypermethrin, S-cyano(3-phenoxyphenyl) methyl (±)-cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers, in or on the following food commodities: PP 6E7132 - Rice, wild, grain at 1.50 parts per million (ppm); okra at 0.20 ppm;

safflower, seed at 0.20 ppm; and PP 6E7133 - Fruit, citrus, group 10 at 0.25 ppm; citrus, dried, pulp at 0.50 ppm; and citrus, oil at 0.90 ppm. That notice referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of October 24, 2007 (72 FR 60369-60371) (FRL–8150–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7255) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540-6635. The petition requested that 40 CFR 180.418 be amended by establishing tolerances for combined residues of the insecticide zeta-cypermethrin, S-cyano(3-phenoxyphenyl) methyl (±)-cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers, at 0.2 ppm in or on the following commodities: borage, seed; castor oil plant, seed; Chinese tallowtree, seed; crambe, seed; cuphea, seed; echium, seed; euphorbia, seed; evening primrose, seed; flax, seed; gold of pleasure, seed; hare's ear mustard, seed; jojoba, seed; lesquerella, seed; lunaria, seed; meadowfoam, seed; milkweed, seed; mustard, seed; niger seed, seed; oil radish, seed; poppy, seed; rose hip, seed; sesame, seed; Stokes aster, seed; sweet rocket, seed; tallowwood, seed; tea oil plant, seed; and vernonia, seed. That notice referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received from a private citizen on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. below.

Based upon review of the data supporting the petition, EPA has revised the tolerance levels for citrus commodities and determined that a separate tolerance is needed for refined oils derived from several of the proposed oilseed crops. The reason for these changes is explained in Unit V.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of zeta-cypermethrin and its inactive R-isomers on Borage, seed at 0.2 ppm; Castor oil plant, refined oil at 0.4 ppm; Castor oil plant, seed at 0.2 ppm; Chinese tallowtree, refined oil at 0.4 ppm; Chinese tallowtree, seed at 0.2 ppm; Citrus, dried pulp at 1.8 ppm; Citrus, oil at 4.0 ppm; Crambe, seed at 0.2 ppm; Cuphea, seed at 0.2 ppm; Echium, seed at 0.2 ppm; Euphorbia, refined oil at 0.4 ppm; Euphorbia, seed at 0.2 ppm; Evening primrose, refined oil at 0.4 ppm; Evening primrose, seed at 0.2 ppm; Flax, seed at 0.2 ppm; Fruit, citrus, group 10 at 0.35 ppm; Gold of pleasure, seed at 0.2 ppm; Hare's-ear mustard, seed at 0.2 ppm; Jojoba, refined oil at 0.4 ppm; Jojoba, seed at 0.2 ppm; Lesquerella, seed at 0.2 ppm; Lunaria, seed at 0.2 pm; Meadowfoam, seed at 0.2 ppm; Milkweed, seed at 0.2 ppm; Mustard, seed at 0.2 ppm; Niger seed, refined oil at 0.4 ppm; Niger seed, seed at 0.2 ppm; Oil radish, seed at 0.2 ppm; Okra at 0.2 ppm; Poppy, seed at 0.2 ppm; Rice, wild, grain at 1.5 ppm; Rose hip, refined oil at 0.4 ppm; Rose hip, seed at 0.2 ppm; Safflower, seed at 0.2 ppm; Sesame, seed at 0.2 ppm; Stokes aster, refined oil at 0.4 ppm; Stokes aster, seed at 0.2 ppm; Sweet rocket, seed at 0.2 ppm; Tallowwood, refined oil at 0.4 ppm; Tallowwood, seed at 0.2 ppm; Tea oil plant, refined oil at 0.4 ppm; Tea oil plant, seed at 0.2 ppm; Vernonia, refined oil at 0.4 ppm; and Vernonia, seed at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

Zeta-cypermethrin is an enriched version of the synthetic pyrethroid insecticide cypermethrin. Cypermethrin [(±) α-cyano-(3-phenoxyphenyl)methyl (±)-cis, trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] is a racemic mixture of eight isomers (each with percentages of 11-14%). Zeta-cypermethrin consists primarily of the four isomers with the ''S'' configuration at the cyano-bearing carbon. While cypermethrin and zeta-cypermethrin are separate active ingredients, each registered in separate end-use products, they are considered together in this risk assessment due to the close similarity of their uses, toxicity, and chemical characteristics.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by cypermethrin/zeta-cypermethrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Zeta-cypermethrin: Human Health Risk Assessment for Section 3 Use of Zeta-cypermethrin on Citrus (Crop Group 10), Oilseeds (proposed Crop Group 20, except cottonseed), Safflower, Wild Rice and Okra*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES** and is identified as document ID number EPA–HQ–OPP–2007–0300-0006 in that docket.

The toxicity data for zeta-cypermethrin indicate one major target for this chemical: the neuromuscular system. There may be some liver effects as well; however, these may be an adaptive response. The neuromuscular effects (tremors, gait abnormalities, and decreases in motor activity) occur mainly in oral studies in the dog and the rat. Similar effects were observed in a rat inhalation study conducted with cypermethrin. As with other pyrethroids, the neuromuscular effects appear to be transient acute effects and do not appear to increase in severity with increasing duration of exposure.

Studies on zeta-cypermethrin, in addition to those on cypermethrin,

show that it is not a developmental or reproductive toxicant. In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity up to the highest dose tested. Maternal toxicity was observed in these studies in the form of decreased body weight gain and food consumption and/or clinical signs of neurotoxicity such as gait abnormalities. In the multi-generation reproduction studies in rats, offspring toxicity was observed at the same treatment level that resulted in parental systemic toxicity. There did not appear to be any increases in severity of toxicity for the pups in these studies. In the developmental neurotoxicity (DNT) study, there was limited evidence of increased susceptibility of the offspring. No toxicity was observed in the maternal animals at the highest dose tested, while decreased body weight, decreased subsession motor activity, and changes in brain morphometry were seen in the offspring at this same dose. With the available toxicity database at this time, there is no evidence of endocrine disruption.

EPA has classified cypermethrin/zeta-cypermethrin as a possible human carcinogen, based on an increased incidence of lung adenomas and combined adenomas plus carcinomas in female mice. The presence of common benign tumors (lung adenomas) in one species (mice) and one sex (female), with no increase in the proportion of malignant tumors or decrease in the time-to-tumor occurrence, together with the lack of mutagenic activity, was not considered strong enough evidence to warrant a quantitative estimation of human cancer risk. The point-of-departure selected for deriving the chronic reference dose will account for all chronic effects as well as potential cancer effects.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty factors (UFs) is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for zeta-cypermethrin/cypermethrin used for human risk assessment can be found at *http://www.regulations.gov* at pages 25-26 in the document *Zeta-cypermethrin: Human Health Risk Assessment for Section 3 Use of Zeta-cypermethrin on Citrus (Crop Group 10), Oilseeds (proposed Crop Group 20, except cottonseed), Safflower, Wild Rice and Okra* in docket ID number EPA–HQ–OPP–2007–0300.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cypermethrin/zeta-cypermethrin, EPA considered exposure under the petitioned-for tolerances as well as all existing cypermethrin/zeta-cypermethrin tolerances in 40 CFR 180.418. Cypermethrin and zeta-cypermethrin are registered for use on some of the same commodities; however, when both are applied to the same crop in the same year, the maximum seasonal rate may not exceed the maximum seasonal rate for cypermethrin when used alone. Therefore, EPA has not assumed that residues of both cypermethrin and zeta-cypermethrin would appear on the same crop. EPA assessed dietary exposures from cypermethrin/zeta-cypermethrin in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues. For crops with both cypermethrin and zeta-cypermethrin tolerances, the higher of the two tolerances was assumed.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA calculated anticipated residues for most commodities. Anticipated residues were based on USDA Pesticide Data Program (PDP) monitoring data or crop field trial data and in many cases were further adjusted to reflect actual percent crop treated (PCT) estimates. For crops with both cypermethrin and zeta-cypermethrin registrations, the higher of the two PCT estimates was assumed. EPA assumed 100 PCT for all of the new uses. Anticipated residues were calculated for livestock commodities using the residue data from livestock feeding studies in conjunction with anticipated dietary burdens from consumption of cypermethrin/zeta-cypermethrin treated feed items. Projected PCT (PPCT) estimates were used in these calculations for certain recently registered feed items (alfalfa hay, other hay and pasture/rangeland grasses), since reliable PCT estimates based on historical usage are not yet available.

iii. *Cancer*. As discussed above in Unit III.A., EPA has classified cypermethrin/zeta-cypermethrin as a possible human carcinogen (Group C), based on an increased incidence of lung adenomas and combined adenomas plus carcinomas in female mice. EPA determined that the Chronic Reference Dose (cRfD) would be protective of any cancer risk posed by zeta-cypermethrin because the cRfD of 0.06 milligrams/kilogram/day (mg/kg/day) (based on a NOAEL of 6 mg/kg/day) used for risk assessment is significantly lower than the dose of 1,600 ppm (approximately 229 mg/kg/day) at which tumors were observed; the NOAEL for tumor induction is 400 ppm (approximately 57 mg/kg/day). EPA also took into account that the benign tumors (lung adenomas) were observed in one species (mice) and one sex (female), with no increase in the proportion of malignant tumors or decrease in the time-to-tumor

occurrence. Together with the lack of mutagenic activity, there was not strong enough evidence to warrant a quantitative estimation of human cancer risk. Therefore, the cRfD is considered protective of both non-cancer and cancer effects and a separate cancer exposure assessment was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition a.* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

• *Condition b.* The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition c.* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information in the chronic dietary exposure assessment as follows:

PCT estimates for existing uses: broccoli 6%, cabbage 3%, carrots 1%, cauliflower 13%, collards 9%, celery 1%, corn (field and sweet) <1%, cotton 5%, garlic 13%, kale 13%, lettuce (head and leaf) 26%, mustard greens 8%, onions 15%, peanuts <1%, pecans 9%, sorghum <1%, soybeans <1%, spinach 2%, tomato 1%, turnip greens 4% and wheat <1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5% except for those situations in which the average PCT is less than one. In those cases <1% is used as the average. In most cases, EPA uses available data from U. S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA used Projected PCT (PPCT) estimates for animal feed items: alfalfa hay 3%, other hay 1% and pasture/rangeland <1%.

EPA estimates PPCT for a new pesticide use by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the market leader (i.e., the one with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant insecticide on the use site is selected for comparison with the new insecticide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for the PCT data because they are publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

This estimated PPCT, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. Predominant factors that bear on whether the estimated PPCT for these three crops could be exceeded include pest resistance concerns, relative efficacies, pest prevalence and other factors. All such relevant information that is currently available to EPA has been considered for zeta-cypermethrin on alfalfa hay, other hay and pasture/rangeland. It is unlikely that the actual PCT for zeta-cypermethrin will exceed the estimated PPCT for this chemical on each of these three sites during the next 5 years.

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

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of cypermethrin/zeta-cypermethrin for acute exposures are estimated to be 1.04 parts per billion (ppb) for surface water and 0.0036 ppb for ground water. The EECs for chronic exposures are estimated to be 0.013 ppb for surface water and 0.0036 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.04 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of

value 0.013 ppb was used to assess the contribution to drinking water.

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

Cypermethrin/zeta-cypermethrin is currently registered for the following residential non-dietary sites: as an indoor surface or spot/crack and crevice treatment; and as a granular broadcast or spot application for lawns. EPA assessed residential exposure using the following assumptions:

There is a potential for short- and intermediate-term dermal and inhalation exposure of homeowners applying products containing cypermethrin/zeta-cypermethrin in indoor (surface or crack and crevice treatments) and outdoor (lawn treatment) settings. The outdoor use on lawns, considered the worst case residential handler exposure scenario, was used to assess residential handler exposure and risk. A dermal endpoint of concern for adults was not identified in the toxicology database for cypermethrin/zeta-cypermethrin; therefore, only the inhalation route of exposure was assessed for residential applicators.

There is also a potential for short- and intermediate-term dermal and inhalation post-application exposure of adults and short- and intermediate-term dermal, inhalation and incidental oral post-application exposure of children from entering areas treated with cypermethrin/zeta-cypermethrin. As noted above, a dermal endpoint of concern for adults was not identified in the toxicology database for cypermethrin/zeta-cypermethrin. In addition, EPA has determined in previous residential assessments that indoor and outdoor inhalation exposures are negligible, due in part to the low vapor pressure of cypermethrin/zeta-cypermethrin; therefore, EPA only assessed post-application dermal and incidental oral exposure of children to cypermethrin/zeta-cypermethrin in indoor and outdoor settings.

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

Cypermethrin/zeta-cypermethrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids interact with sodium channels, there are multiple types of sodium channels and it is currently unknown whether the pyrethroids have similar effects on all channels. Nor do we have a clear understanding of effects on key downstream neuronal function e.g., nerve excitability, nor do we understand how these key events interact to produce their compound-specific patterns of neurotoxicity. There is ongoing research by the EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. Information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism can be found on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty factors (UFs) and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The pre- and postnatal toxicology database for cypermethrin/zeta-cypermethrin includes rat and rabbit developmental toxicity studies, a two-generation reproduction toxicity study in rats and a developmental neurotoxicity (DNT) study in rats. There was no evidence of increased quantitative or qualitative susceptibility of *in utero* rats or rabbits or offspring following exposure to cypermethrin/zeta-cypermethrin in the developmental toxicity and reproduction studies.

In the DNT study, there was limited evidence of increased susceptibility of the offspring. No toxicity was observed in the maternal animals at the highest dose tested, while decreased body weight, decreased subsession motor activity, and changes in brain morphometry were seen in the offspring at this same dose. An in-depth analysis of the effects seen in the pups revealed that these effects were of low concern because:

i. Body weight decreases were seen only during late lactation (postnatal days 13 to 21) when the pups are potentially exposed to higher levels of the chemical via both milk and feed.

ii. The decreases in motor activity were not considered biologically significant because they were seen only in the subsession data (not in total or ambulatory counts), only in one sex (females), only on postnatal day 21 (not in measurements taken at three other time periods), and the differences did not reach statistical significance.

iii. The sole brain morphometric change (increased mean vertical thickness of the cortex) was determined to occur in isolation, only in female pups on day 21, and was not considered biologically significant because when the values of individual treated animals were compared with individual control animals, the incidence and magnitude of the change suggested a low concern.No statistically or biologically significant changes were seen in any other brain areas in male or female pups at any time period.

Based on these factors, the limited susceptibility seen in the DNT was determined to be of low concern, and there are no residual uncertainties for pre- and/or postnatal neurotoxicity.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for cypermethrin/zeta-cypermethrin is complete.

ii. There is no evidence that cypermethrin/zeta-cypermethrin results in increased qualitative or quantitative susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iii. Although there is limited evidence of increased susceptibility of the offspring in the DNT study, the degree

of concern for pre- and/or postnatal toxicity is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment utilizes tolerance level residues and 100 PCT. The chronic dietary food exposure assessment utilizes anticipated residues that are based on reliable field trial or PDP monitoring data. The chronic assessment also utilizes PCT data for many registered commodities that have been verified by the Agency, as well as high-end PPCT estimates for animal feed items that are unlikely to be exceeded during the next 5 years. Conservative ground and surface water modeling estimates were used. Similarly, conservative residential SOPs were used to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cypermethrin/zeta-cypermethrin.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cypermethrin/zeta-cypermethrin will occupy 53% of the aPAD for children, 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cypermethrin/zeta-cypermethrin from food and water will utilize 3.0% of the cPAD for children, 1 to 2 years old, the population group with the greatest estimated exposure. Based on the use pattern, chronic residential exposure to residues of cypermethrin/zeta-cypermethrin is not expected.

3. *Short- and intermediate-term risk*. Short-term and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cypermethrin/zeta-cypermethrin is currently registered for uses that could result in short- and intermediate-term residential exposures and the Agency has determined that it is appropriate to aggregate chronic food and water and short- or intermediate-term exposures for cypermethrin/zeta-cypermethrin. Since the cypermethrin/zeta-cypermethrin endpoints and points of departure (NOAELs) are identical for short- and intermediate-term exposures, in this case the aggregate MOEs for short- and intermediate-term exposure are the same.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 7,500 for the overall U.S. population and 8,600 for females 13 to 49 years old, using handler exposure estimates based on indoor surface uses of cypermethrin/zeta-cypermethrin. Aggregate MOEs for infants and children are estimated to be 220 and 160, respectively, based on post-application exposures following indoor surface treatments with cypermethrin/zeta-cypermethrin. The indoor surface treatment scenario was used in the aggregate assessment, since this scenario resulted in the highest estimated exposures and is, therefore, protective of all post-application exposures. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water and residential uses.

5. *Aggregate cancer risk for U.S. population*. Cypermethrin/zeta-cypermethrin has been classified as a ''Group C'' (possible human) carcinogen, based on an increased incidence of lung adenomas and combined adenomas plus carcinomas in female mice. As explained above, risk assessments based on the endpoint selected for the chronic population adjusted dose (cPAD) are considered to be protective of any potential carcinogenic risk from exposure to cypermethrin/zeta-cypermethrin. Based on the results of the chronic risk assessment discussed above in Unit III.E.2., EPA concludes that cypermethrin/zeta-cypermethrin is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement analytical methodology for cypermethrin and zeta-cypermethrin residues is available in PAM Volume II. PAM Volume II lists Methods I and II for the determination of residues of cypermethrin *per se* in or on plant and livestock commodities, respectively. Both are gas chromatography (GC) methods with electron capture detection and have undergone successful Agency method tryout. Method I has a detection limit of 0.01 ppm and Method II has detection limits of 0.005 ppm for milk and 0.01 ppm for livestock tissues. These methods are not stereo-specific; thus, no distinction is made between residues of cypermethrin (all eight stereoisomers) and zeta-cypermethrin (an enriched isomer form of cypermethrin).

B. International Residue Limits

There are no specific Codex maximum residue limits (MRLs) for zeta-cypermethrin, but there are Codex MRLs for cypermethrin. Codex has an MRL of 2.0 ppm for cypermethrin on citrus, an MRL of 0.2 ppm on oilseeds and an MRL of 0.5 ppm on edible vegetable oils. The 0.2 ppm U.S. tolerances on safflower and other oilseeds are harmonized numerically with the current Codex MRL of 0.2 mg/kg on oilseeds, although the latter is based on cypermethrin instead of zeta-cypermethrin. EPA is not recommending an increase in the U.S. citrus tolerance of 0.35 ppm or the tolerance on refined oils of 0.4 ppm to harmonize numerically with the Codex MRLs on citrus and edible vegetable oils, because the latter are expressed in terms of cypermethrin, which requires higher application rates and residues than zeta-cypermethrin to be efficacious.

C. Response to Comments

Comments were received from a private citizen objecting to the sale of zeta-cypermethrin anywhere in this country on the basis that it is a ''possible human carcinogen''. EPA considered the carcinogenic potential of zeta-cypermethrin in its risk assessment and determined that it did not pose a cancer risk. Comments received contained no scientific data or other substantive evidence to rebut this conclusion or the Agency's finding that there is a reasonable certainty that no

harm will result from aggregate exposure to cypermethrin/zeta-cypermethrin from the establishment of these tolerances. The Agency has received these same or similar comments from this commenter on numerous previous occasions. Refer to 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005), and 69 FR 63096-63098 (October 29, 2004) for the Agency's previous responses to these objections.

V. Conclusion

Based upon review of the data supporting the petitions, EPA has modified the proposed tolerances as follows: (1) Increased the tolerance level for Fruit, citrus, group 10 from 0.25 ppm to 0.35 ppm; for Citrus, dried pulp from 0.5 ppm to 1.8 ppm; and for Citrus, oil from 0.9 ppm to 4.0 ppm; and (2) Determined that a separate, higher tolerance of 0.4 ppm should be established for specific refined oils. EPA revised these tolerance levels based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* and the results of citrus and oilseed processing studies. EPA also revised the commodity term for Safflower to read ''Safflower, seed'' to agree with the recommended commodity term in the Office of Pesticide Program's Food and Feed Commodity Vocabulary.

Therefore, tolerances are established for combined residues of zeta-cypermethrin, S-cyano(3-phenoxyphenyl)methyl(±)(cis-trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its inactive R-isomers, in or on Borage, seed at 0.2 ppm; Castor oil plant, refined oil at 0.4 ppm; Castor oil plant, seed at 0.2 ppm; Chinese tallowtree, refined oil at 0.4 ppm; Chinese tallowtree, seed at 0.2 ppm; Citrus, dried pulp at 1.8 ppm; Citrus, oil at 4.0 ppm; Crambe, seed at 0.2 ppm; Cuphea, seed at 0.2 ppm; Echium, seed at 0.2 ppm; Euphorbia, refined oil at 0.4 ppm; Euphorbia, seed at 0.2 ppm; Evening primrose, refined oil at 0.4 ppm; Evening primrose, seed at 0.2 ppm; Flax, seed at 0.2 ppm; Fruit, citrus, group 10 at 0.35 ppm; Gold of pleasure, seed at 0.2 ppm; Hare's-ear mustard, seed at 0.2 ppm; Jojoba, refined oil at 0.4 ppm; Jojoba, seed at 0.2 ppm; Lesquerella, seed at 0.2 ppm; Lunaria, seed at 0.2 pm; Meadowfoam, seed at 0.2 ppm; Milkweed, seed at 0.2 ppm; Mustard, seed at 0.2 ppm; Niger seed, refined oil at 0.4 ppm; Niger seed, seed at 0.2 ppm; Oil radish, seed at 0.2 ppm; Okra at 0.2 ppm; Poppy, seed at 0.2 ppm; Rice, wild, grain at 1.5 ppm; Rose hip, refined oil at 0.4 ppm; Rose hip, seed at 0.2 ppm; Safflower, seed at 0.2 ppm; Sesame, seed at 0.2 ppm; Stokes aster, refined oil at 0.4 ppm; Stokes aster, seed at 0.2 ppm; Sweet rocket, seed at 0.2 ppm; Tallowwood, refined oil at 0.4 ppm; Tallowwood, seed at 0.2 ppm; Tea oil plant, refined oil at 0.4 ppm; Tea oil plant, seed at 0.2 ppm; Vernonia, refined oil at 0.4 ppm; and Vernonia, seed at 0.2 ppm.

Time-limited tolerances were established at 40 CFR 180.418(b) for residues of zeta-cypermethrin in or on flax, meal and seed in connection with FIFRA section 18 emergency exemptions granted by EPA. These time-limited tolerances are no longer necessary, because a permanent tolerance is being established for flax at the same level. Therefore, these time-limited tolerances for residues of zeta-cypermethrin are revoked.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 20, 2007.

Lois Rossi

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.418 is amended by alphabetically adding the following commodities to the table in paragraph (a)(2) and removing the text from paragraph (b) and reserving the paragraph designation and heading to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * *	* *
Borage, seed	0.2
* * *	* *
Castor oil plant, refined oil	0.4
Castor oil plant, seed	0.2
* * *	* *
Chinese tallowtree, refined oil	0.4
Chinese tallowtree, seed	0.2
* * *	* *
Citrus, dried pulp	1.8
Citrus, oil	4.0
* * *	* *
Crambe, seed	0.2
Cuphea, seed	0.2
Echium, seed	0.2
* * *	* *
Euphorbia, refined oil	0.4
Euphorbia, seed	0.2
Evening primrose, refined oil	0.4
Evening primrose, seed	0.2
Flax, seed	0.2
* * *	* *
Fruit, citrus, group 10	0.35
* * *	* *
Gold of pleasure, seed	0.2
* * *	* *
Hare's-ear mustard, seed	0.2
* * *	* *
Jojoba, refined oil	0.4
Jojoba, seed	0.2
Lesquerella, seed	0.2
Lunaria, seed	0.2
Meadowfoam, seed	0.2
* * *	* *
Milkweed, seed	0.2
Mustard, seed	0.2
Niger seed, refined oil	0.4
Niger seed, seed	0.2
* * *	* *
Oil radish, seed	0.2
Okra	0.2
* * *	* *
Poppy, seed	0.2
* * *	* *
Rice, wild, grain	1.5
Rose hip, refined oil	0.4
Rose hip, seed	0.2
Safflower, seed	0.2
Sesame, seed	0.2
* * *	* *
Stokes aster, refined oil	0.4
Stokes aster, seed	0.2
* * *	* *
Sweet rocket, seed	0.2
Tallowwood, refined oil	0.4
Tallowwood, seed	0.2
Tea oil plant, refined oil	0.4
Tea oil plant, seed	0.2
* * *	* *
Vernonia, refined oil	0.4
Vernonia, seed	0.2
* * *	* *

(b) Section 18 emergency exemptions. [Reserved]

* * * * *

[FR Doc. E7–25392 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2007–0026; 92210–1117–0000; ABC Code: B4]

RIN 1018–AU83

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Monterey Spineflower (Chorizanthe pungens var. pungens)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating revised critical habitat for the threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 11,055 acres (ac) (4,475 hectares (ha)) fall within the boundaries of this revised critical habitat designation. The revised critical habitat is located in Santa Cruz and Monterey counties, California.

DATES: This rule becomes effective on February 8, 2008.

ADDRESSES: Comments and materials we received, as well as supporting documentation we used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805–644–1766). The final rule, economic analysis, and more detailed maps are also available on the Internet at *http://www.fws.gov/ventura*.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Listing and Recovery Coordinator for Plants, Ventura Fish and Wildlife Office (see **ADDRESSES**), (telephone 805–644–1766, ext. 306; facsimile 805–644–3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat in this rule. For more detailed background information on the appearance, seed ecology, habitat requirements, and the historical and current distribution of *Chorizanthe pungens* var. *pungens*, refer to the proposed revised critical habitat designation published in the **Federal Register** on December 14, 2006 (71 FR 75189), and the previous final designation of critical habitat for *C. p.* var. *pungens* published in the **Federal Register** on May 29, 2002 (67 FR 37498). Additional information on *C. p.* var. *pungens* is also available in the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5499).

Chorizanthe pungens var. *pungens* is an annual species in the buckwheat family (Polygonaceae). It is a low-growing herb that is soft-hairy and grayish or reddish in color, with white- to rose-colored flowers. It produces one seed per flower, and depending on the vigor of an individual plant, dozens to over one hundred seeds can be produced (Abrams 1944, F35–1; Fox *et al.* 2006, pp. 162–163). Seed dispersal in *C. p.* var. *pungens* is likely facilitated by hooked spines on the structure surrounding the seed. In the *Chorizanthe* genus, these are believed to attach to passing animals and disperse seed between plant colonies and populations (Reveal 2001, unpaginated). Wind also disperses seed within colonies and populations.

Previous Federal Actions

On May 29, 2002, we designated critical habitat for *Chorizanthe pungens* var. *pungens* on approximately 18,829 acres (ac) (7,620 hectares (ha)) of land in Santa Cruz and Monterey counties, California (67 FR 37498). In March 2005, the Homebuilders Association of Northern California, *et al.*, filed suit against the Service (CV–013630LKK–JFM) challenging final critical habitat rules for several species, including *Chorizanthe pungens* var. *pungens*. In March 2006, a settlement was reached that requires the Service to re-evaluate five final critical habitat designations, including critical habitat designated for

C. p. var. *pungens*. The settlement stipulated that any proposed revisions to the *C. p.* var. *pungens* designation would be submitted to the **Federal Register** for publication on or before December 7, 2006, and a final determination by December 7, 2007. We published the proposed revisions to the critical habitat designation for *C. p.* var. *pungens* in the **Federal Register** on December 14, 2006 (71 FR 75189), and accepted public comments on the proposed revisions until February 12, 2007. This final rule completes the Service's obligation regarding this species under the March 2006 settlement agreement.

On October 16, 2007, we published a notice announcing the availability of the draft economic analysis and reopening the public comment period on the revised proposed rule (72 FR 58618). This comment period closed on October 31, 2007. For more information on previous Federal actions concerning *Chorizanthe pungens* var. *pungens*, refer to the three documents we previously published in the **Federal Register** and identified above in this ''Previous Federal Actions'' section.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* in the revised proposed rule published on December 14, 2006 (71 FR 75189) and again in a subsequent notice of availability of the draft economic analysis published in the **Federal Register** on October 16, 2007 (72 FR 58618). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the revised proposed rule.

During the comment period that opened on December 14, 2006, and closed on February 12, 2007, we received five comment letters directly addressing the proposed revised critical habitat designation: Three from peer reviewers, and two from organizations or individuals. During the comment period that opened on October 16, 2007, and closed on October 31, 2007, we received two comment letters addressing the proposed revised critical habitat designation and the draft economic analysis. Of these latter comments, one was from a landowner, and one was from an individual. Of the seven total letters, two commenters expressed support for a designation of critical habitat for *Chorizanthe pungens* var. *pungens*, two opposed part or all of the designation of critical habitat for this taxon, and three letters included comments or information but did not express support or opposition to the proposed revised critical habitat designation. Comments we received are addressed in the following summary and incorporated into this final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three of the peer reviewers. The peer reviewers provided additional information, clarifications, and suggestions to improve the revised final critical habitat rule.

We reviewed all comments we received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Chorizanthe pungens* var. *pungens*, and we address them in the following summary.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer noted that we had reduced the size of the units in the proposed revised designation as compared to the 2002 designation. The reviewer questioned why the northernmost area of Unit 2 has been divided into 2 subunits that are no longer continuous along the coastline. The commenter noted that the separation between the 2 northern subunits seemed artificial because appropriate habitat is continuous along that stretch of coastline.

Our Response: We used a multi-step process to identify and delineate critical habitat units. First we mapped all California Natural Diversity Database (CNDDB) records and additional records from recent surveys that have been reported to the CNDDB but have not yet been entered into their database in a Geographic Information System (GIS) format. We then selected sites from among this data set that contain the physical and biological features essential to the conservation of *C. p.* var. *pungens*, that may require special management considerations or protection, and would result in a designation that: (a) Represents the geographical range of the species, and captures peripheral populations; (b) encompasses large occurrences in large areas of contiguous native habitat, as these have the highest likelihood of persisting through the environmental extremes that characterize California's climate and of retaining the genetic variability to withstand future introduced stressors (e.g., new diseases, pathogens, or climate change); (c) includes the range of plant communities and soil types in which *Chorizanthe pungens* var. *pungens* is found, (d) maintains connectivity of occurrences; (e) maintains the disturbance factors that create the openings in vegetation cover on which this taxon depends; and (f) provides for the sufficient quantity and spatial arrangement of the primary constituent element (PCE) to provide for the conservation of the species.

Once we identified all areas that contain the physical and biological features essential to the conservation of the species, we focused first on those areas that were either already protected, managed, or unencumbered by conflicting use (e.g., undeveloped County or City parks) or otherwise best suited for future conservation (e.g., proposed preservation areas). Populations in these areas are most likely to persist into the future and to contribute to the species' survival and recovery. We prioritized our selection in the following manner: First we included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented, non-profit organization, or undeveloped County or City parks), and finally other agency and private lands.

Based on the comments received by the peer reviewer, we have reviewed the biological information available for the lands in and adjacent to the northern two subunits of Unit 2 (Moss Landing Unit). Approximately 224 ac (91 ha) of State lands containing the essential features for *Chorizanthe pungens* var. *pungens* occur along this stretch of coastline, within Zmudowski and Moss Landing State Beaches. Of the 26 ac (10.5 ha) of land that occurs between the two northernmost subunits of Unit 2, 6 ac (2.4 ha) are county-owned and 20 ac (8.1 ha) are privately owned. The habitat between the two northernmost subunits contains the features essential for the conservation of *C. p.* var. *pungens*, is occupied by the species, and together with the State lands on either side, provides one contiguous block of coastal habitat for the species. The 26 ac (10.5 ha) of habitat were included in our previous critical habitat designation of 2002 and protection of this coastal area is identified in the Recovery Plan for *C. p.* var. *pungens* as one of the criteria to recover and de-list the species. We conclude that the 26 acres (10.5 ha) of

land between the two northernmost subunits of Unit 2 are essential to the conservation of *C. p.* var. *pungens* and have included the lands in the final revised designation.

(2) *Comment:* Two peer reviewers commented on the response of *Chorizanthe pungens* var. *pungens* to human-caused disturbance. One peer reviewer commended the Service for distinguishing between human-caused disturbance that results in unvegetated openings (e.g., roadsides or trails) that may be colonized by *C. p.* var. *pungens* and openings caused by animals or other non-human factors in ecologically intact, dynamic, dune communities. This reviewer described observations made at Moss Landing Marine Laboratories where biologists distributed seeds of *C. p.* var. *pungens* in dune soils disturbed by construction. Although these attempts resulted in initially large numbers of flowering *C. p.* var. *pungens*, the numbers declined substantially over the following 6 years, even though there appeared to be sufficient bare ground for the persistence of *C. p.* var. *pungens*. The other peer reviewer indicated that from her 10 years of experience with *C. p.* var. *pungens* it is clear that human-caused disturbances, such as roads and trails, are soon invaded by nonnative, invasive plants, which compete with *C. p.* var. *pungens*. The peer reviewer suggested that invasive, nonnative plants must be controlled on roads and trails to prevent a decline in *C. p.* var. *pungens*, and that if roads and trails are not needed they should be restored to a condition where openings between shrubs are free of nonnative plant species.

Our Response: We appreciate the information provided by the peer reviewers and have provided clarifications in the section titled ''Criteria Used to Identify Critical Habitat'' in this final rule in response to their comments.

(3) *Comment:* One peer reviewer indicated that the area for Unit 8 (Fort Ord) is an overestimate of area actually occupied by *Chorizanthe pungens* var. *pungens*. The reviewer noted that the proposed unit contains high quality habitat for *C. p.* var. *pungens* in some areas, while other areas support a high cover of perennials or have been invaded by nonnative plant species.

Our Response: We recognize that the area of Unit 8 (Fort Ord Unit) exceeds the area currently documented to be occupied by *Chorizanthe pungens* var. *pungens* because, due to mapping limitations and scale, it does not exclude intervening, currently unoccupied habitat. Unit 8 contains multiple populations of *C. p.* var. *pungens* within a mosaic of oak woodland, coastal sage scrub, and maritime chaparral where the soil and vegetation structure currently provide the open conditions suitable for its growth and reproduction (i.e., the primary constituent element). Over time, the locations of suitable habitat will change as some maritime chaparral stands age, resulting in a continuous vegetation canopy, while other openings are created through shrub death, prescribed fire, or animal use. The size and configuration of Unit 8 is designed to accommodate the ephemeral and successional nature of any given opening in its ability to support *C. p.* var. *pungens* and the value of habitat management at a landscape scale.

(4) *Comment:* One peer reviewer noted the fragmented configuration of the proposed revised critical habitat and indicated that this configuration will require specific management actions to reduce the detrimental effects of fragmentation so that critical habitat can provide for the conservation of the species.

Our Response: We recognize that, in many cases, development has already resulted in a discontinuous distribution of lands supporting the physical and biological features essential for the conservation of *Chorizanthe pungens* var. *pungens*. In cases where public lands supporting the essential features are contiguous, we have tried to designate those lands within the same critical habitat unit or subunit. For example, Unit 8 (Fort Ord) consists of public lands supporting the essential features over a relatively large area, unfragmented by development. This lack of intervening development improves the likelihood that future management will be able to promote multiple, large areas of the relatively open, maritime chaparral plant community that is suitable for *C. p.* var. *pungens*. We recognize that specific management actions will likely be needed in some of the designated units to overcome the disadvantages of habitat fragmentation.

(5) *Comment:* One peer reviewer commented that it was not clear why the Del Rey Oaks unit from the 2002 final designation was not included in the 2006 proposed revised critical habitat designation.

Our Response: As we indicated in the revised proposed rule, the previously designated Del Rey Oaks unit contains substantial areas that have continued to be developed since 2002, and, as a consequence, the areas within the unit that contain the PCE for *Chorizanthe pungens* var. *pungens* are very fragmented. Therefore, the PCE is no longer in the spatial arrangement and quantity necessary to be considered essential to the conservation of the species. As we noted in our response to Comment 1, in determining which areas to include in critical habitat, we first identified all areas which contain the PCE for the species in sufficient quantity and spatial arrangement and are either already protected, managed, or unencumbered by conflicting use (e.g., Federal lands, undeveloped County or State parks, proposed preservation areas). These areas are the focus for our designation, as they generally consist of higher quality habitat that is most likely to persist into the future. The Del Rey Oaks unit designated in the 2002 final rule is in close proximity to the much larger Fort Ord unit (Unit 8). We determined that the Fort Ord unit, which encompasses a large amount of unfragmented public land that supports the essential physical and biological features, contains sufficient areas containing the PCE laid out in the appropriate quantity and spatial arrangement to provide for the conservation of *C. p.* var. *pungens* in this area.

(6) *Comment:* One peer reviewer commented that mowing can be an appropriate management tool where nonnative annual grasses have invaded, if mowing is done at the proper time and height to remove annual grass seedheads prior to their maturity, while leaving the low-growing *Chorizanthe pungens* var. *pungens* intact.

Our Response: We agree that where nonnative grasses are abundant, mowing could potentially be designed to avoid *Chorizanthe pungens* var. *pungens*, while removing maturing grasses prior to seed maturity. We have revised the text under the ''Primary Constituent Elements'' section, below, to reflect this.

Public Comments

(7) *Comment:* One commenter recommended that two additional areas occupied by *Chorizanthe pungens* var. *pungens* be included in the critical habitat designation. One of these is Armstrong Ranch, which the commenter indicated would provide a connection between Units 3 and 8 in the proposed revised designation. The other site is a population at the summit of North Rodeo Gulch Road, northwest of Soquel in Santa Cruz County, which the commenter indicated supports the northernmost population of *C. p.* var. *pungens*.

Our Response: In designing this critical habitat designation, we sought to include locations throughout the range of the species that encompass the variation in soil type, vegetation

communities, elevation, and coastal influences of sites where populations of *Chorizanthe pungens* var. *pungens* occur. We chose to include in this revised designation lands at former Fort Ord and the coast, but did not include Armstrong Ranch. We recognize that Armstrong Ranch provides connectivity between Units 3 (Marina) and 8 (Fort Ord); however, we do not believe that these lands should be designated because they do not support the highest quality habitat and the PCE in the appropriate quantity and spatial arrangement for the conservation of *C. pungens* var. *pungens*. Due to its agricultural past, Armstrong Ranch is dominated by nonnative annual grasses, with infrequent patches of coastal sage scrub. In designating Units 3 (Marina) and 8 (Fort Ord), we have included in the designation the more sparsely vegetated dune sands of the coast and the more developed (i.e., deeper), ancient sandy soils of the interior Fort Ord, which support native coastal sage scrub and maritime chaparral vegetation. Consequently, we have encompassed the soil types and native plant communities representing the high quality habitat and the PCE in the appropriate quantity and spatial arrangement for the conservation of *C. pungens* var. *pungens* in this region. These are the lands that we believe are essential to the conservation of *C. p.* var. *pungens*.

We did not include the *Chorizanthe* population near North Rodeo Gulch Road in this revised designation, because of uncertainty regarding its taxonomy. A preliminary genetic analysis in 2007 (Baron and Brinegar 2007, p. 5) determined that the molecular data from this population is consistent with that of *Chorizanthe pungens* var. *pungens* and the robust spineflower (*C. robusta* var. *robusta*), but that analysis could not assign this population to one or the other of the two taxa. Other techniques are now being used to investigate the relationship of this population to these taxa. Therefore, to represent the most northern distribution of *C. pungens* var. *pungens*, we designated the location near Freedom Boulevard. This location is the one for which we have the most complete information, it supports the PCE in the appropriate quantity and spatial arrangement, and encompasses a large population of *C. p.* var. *pungens*.

(8) *Comment:* One commenter suggested that the boundaries for Unit 5, the Freedom Boulevard Unit, be redrawn to encompass a location that supports the PCE and a population of *Chorizanthe pungens* var. *pungens* on an approximately 15 ac (6 ha), privately owned parcel near the intersection of Valencia Road and Freedom Boulevard, and just outside the boundary of the proposed Freedom Boulevard Unit.

Our Response: We had information about other populations of *Chorizanthe pungens* var. *pungens* that exist in the Freedom Boulevard area. However, we did not include the lands that support those populations in our revised proposed rule published in 2006 because most of those lands are fragmented by rural ''ranchette''-type development and were not likely to support populations of *Chorizanthe pungens* var. *pungens* into the future. We concluded that the area included in the final revised designation provides sufficient areas containing the PCE in the quantity and spatial arrangement for the conservation of the species in this portion of the species' range. These 24 ac (10 ha) support the essential physical and biological features and one of the largest populations of *Chorizanthe pungens* var. *pungens* in the Freedom Boulevard area for which we have documentation.

(9) *Comment:* One commenter questioned whether the mapping was correct for the southern boundary of proposed Unit 3 (Marina). The commenter noted that the map appears to encompass an approximately 0.5 ac (0.2 ha) privately owned parcel, but that the description states that the unit contains only State lands.

Our Response: The commenter is correct in noting that our map for Unit 3 contained an error at the southern boundary. To delineate these unit boundaries, we used parcel data from the Department of the Army (Army) for Fort Ord. We did not realize it did not match the parcel boundaries from the Monterey County assessor's office. We intend Unit 3 to extend south only to the boundary of State land, and we have made the correction in this revised designation. No private lands are included in this unit.

(10) *Comment:* One commenter suggested that the microclimate of the inland area in Unit 9 (Soledad) does not seem consistent with the coastal habitat described for *Chorizanthe pungens* var. *pungens*.

Our Response: As we indicated in the revised proposed rule, the habitat of *Chorizanthe pungens* var. *pungens* is sandy soils in active dune systems and bluffs, grassland, scrub, chaparral, and woodland communities containing open areas free of other vegetation. The taxon is not restricted to dunes on the immediate coast. Historically, in the late 1800s and early 1900s, several collections of *C. p.* var. *pungens* were made from the Salinas Valley, and we know of one extant population in the Salinas Valley in interior Monterey County on the lands we are designating as Unit 9. Please see the discussion in the ''Critical Habitat Designation'' section of this final rule for more information on Unit 9 and its value to the conservation of the species.

(11) *Comment:* One commenter stated that the process of designating critical habitat for endangered species was invalid because the Endangered Species Act had expired.

Our Response: The Endangered Species Act has not expired. Section 15 of the Act, which authorizes appropriations to carry out functions and responsibilities under the Act, has text authorizing funding through fiscal year 1992, i.e., the funding authorization provided in Section 15 expired on October 1, 1992. Although Section 15 has not been amended to change the authorization language, Congress has appropriated funds for continued implementation of the administrative provisions of the Act in each subsequent fiscal year, and these annual Congressional decisions are a *de facto* extension of the authorization of appropriations. All of the requirements and prohibitions of the Act remain in force, even in the absence of a change in the text of Section 15 of the Act.

(12) *Comment:* One commenter stated that zero acres should be designated as critical habitat.

Our Response: The identification of areas that are essential for the conservation of the species is beneficial. The process of designating critical habitat, in which we clearly delineate features and areas of high conservation value for the species, helps focus and promote conservation efforts by other parties. Critical habitat designations may also provide greater regulatory benefits to the recovery of a species than would listing alone because the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Under section 7(a) of the Act, Federal agencies must insure that their actions are not likely to (1) jeopardize the continued existence of a listed species, or (2) result in the destruction or adverse modification of that species' critical habitat. The regulatory standard is different for each: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse-modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation.

Comments Related to the Draft Economic Analysis

(13) *Comment:* One commenter stated that the future costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* forecasted in the draft economic analysis are estimates, which are almost always far below what the eventual costs are when they are counted.

Our Response: The purpose of the draft economic analysis is to estimate the economic impact of actions taken to protect *Chorizanthe pungens* var. *pungens* and its habitat. It attempts to quantify the economic effects associated with the proposed revised designation of critical habitat. It does so by taking into account the cost of conservation related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed revised boundaries. The analysis looks retrospectively at costs incurred since *C. p.* var. *pungens* was listed, and it attempts to predict future costs likely to occur after the proposed revised critical habitat designation is finalized. It does this by incorporating the best available information from the section 7 consultations, the Recovery Plan, and conversations with landowners and the Service.

(14) *Comment:* One commenter noted that the designation of proposed critical habitat unit 9 would damage farming operations in the immediate area. The commenter stated that unit 9 is surrounded by farming operations, presently partially farmed, and planned for additional farm development. The commenter requests that the economic analysis consider the negative impact of critical habitat designation on the farm.

Our Response: After many attempts to speak with this commenter, he could not be reached regarding future farming development and whether or not a federal nexus would occur on his land after critical habitat is designated. We lack sufficient information to quantify the impacts to the commenter of the critical habitat designation.

Summary of Changes From the Revised Proposed Rule and Previous Critical Habitat Designation

In preparing this final revised critical habitat designation for *Chorizanthe pungens* var. *pungens*, we reviewed and considered comments from the public and peer reviewers on the proposed revised designation of critical habitat published on December 14, 2006 (71 FR 75189), and public comments on the draft economic analysis published on October 16, 2007 (72 FR 58618). As a result of all comments received on the revised proposed rule and the draft economic analysis, we made changes to our proposed revised designation, as follows:

(1) We corrected the error in Unit 3 by remapping its southern boundary to match the boundary of State lands. This resulted in a reduction of Unit 3 from 884 ac (358 ha) to 881 ac (357 ha). The acreage change is reflected in Table 1.

(2) We included 26 ac (10.5 ha) that had been included in our previous 2002 critical habitat designation between the 2 northernmost subunits of Unit 2 (Moss Landing).

(3) We incorporated technical information provided by the peer reviewers.

(4) We revised the PCE to incorporate the dynamic processes that create and maintain openings in the vegetation communities in which *Chorizanthe pungens* var. *pungens* grows.

This final designation is unchanged from the proposed revised designation with the following exceptions: (1) The correction of a mapping error has reduced Unit 3 by 3 ac (1 ha); and (2) the inclusion of 26 ac (10.5 ha) that had been included in our previous 2002 critical habitat designation between the 2 northern subunits of Unit 2 (Moss Landing), which has increased the size of that unit. The result of these changes has been the increase of final critical habitat designated to 11,055 ac (4,475 ha); this represents a total of 23 ac (9 ha) more than what we proposed in 2006. At the same time, this represents a decrease of 7,774 ac (3,145 ha) from what we previously designated as critical habitat in 2002.

The areas identified in this revised critical habitat designation constitute a revision from the areas we designated as critical habitat for *Chorizanthe pungens* var. *pungens* on May 29, 2002 (67 FR 37498). The main differences include the following:

(1) The 2002 critical habitat rule (67 FR 37498) consisted of 10 units comprising a total of 18,829 ac (7,620 ha). This revision includes 9 units comprising a total of 11,055 ac (4,475 ha). Eight of the units in the revision are generally located in the same geographic locations as those from the previous designation and bear the same unit names. The ninth unit in this revision (Unit 6—Manresa) was included in the previous proposed critical habitat designation in 2000, but dropped from the previous final designation in 2002 due to confusion concerning the identity of the spineflower populations that occur there. Since 2002, we confirmed the presence of *Chorizanthe pungens* var. *pungens* at Manresa State Beach. Additionally, two of the units included in the previous designation in 2002 are not included in this revision. One of these units, Del Rey Oaks, has substantial areas of development within its boundaries, and, as a consequence, the areas within the unit that contain the essential features are very fragmented. The second of these units, Bel Mar, is in close proximity to Unit 6 (Manresa) included in this revision, but not included in the 2002 critical habitat rule. The Monterey spineflower in Unit 6 (Manresa) was recently discovered and contains a more robust population than the Bel Mar unit. For these reasons, the Del Rey Oaks and Bel Mar units designated in 2002 are no longer considered essential to the conservation of the species.

(2) We revised the PCEs. The 2002 critical habitat rule listed four separate elements that we believed to be important to maintaining populations of *Chorizanthe pungens* var. *pungens* where they occur (soils, plant communities, low cover of nonnative species, and physical processes that support natural dune dynamics). In this revision of critical habitat, we have combined these four elements within one PCE in an effort to emphasize the overarching importance of the structure of the vegetation (mosaic with openings between the dominant elements).

(3) Most of the units in this revision are smaller in acreage than their counterpart units in the 2002 critical habitat rule. The decrease in size is due primarily to the removal of numerous parcels in private ownership where, due to the availability of updated aerial imagery, we removed areas of development included in the 2002 critical habitat rule and areas developed since the publication of the 2002 rule. In addition, the changes to Unit 7 are due to the removal of areas designated in the 2002 rule that are underlain by soil types not known to support Monterey spineflower, and removal of areas containing suitable soils isolated by development (and not known to support Monterey spineflower). The resulting units are more accurately mapped to include those areas that contain the PCE laid out in the appropriate quantity and spatial arrangement for the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization may affect a listed species or critical habitat, the consultation requirements of Section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements laid out in the appropriate quantity and spatial arrangement for the conservation of the species, as defined at 50 CFR 424.12(b)).

Areas within the geographical area occupied by the species that contain the physical and biological features essential to the conservation of the species meet the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate an area outside of the geographical area occupied by the species at the time of listing as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations of *Chorizanthe pungens* var. *pungens*, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat within the geographical area occupied by the species at the time of listing, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derived the specific primary constituent element required for *Chorizanthe pungens* var. *pungens* from its biological needs, as described below.

Space for Individual and Population Growth, Including Sites for Seed Dispersal and Germination, and for the Seed Bank

Chorizanthe pungens var. *pungens* readily grows where suitable sandy substrates occur and, like other *Chorizanthe* species, where competition with other plant species is minimal (Harding Lawson Associates 2000, p. 1; Reveal 2001, unpaginated). Where *C. p.* var. *pungens* occurs within native plant communities, along the coast as well as at more interior sites, it occupies microhabitat sites between shrub stands where there is little cover from other herbaceous species. Where *C. p.* var.

pungens occurs within grassland communities, the density of *C. p.* var. *pungens* may decrease with an increase in the density of other herbaceous species. Conserved areas should be of sufficient size and spatial arrangement to maintain the native plant communities that support *C. p.* var. *pungens*, which include coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure with openings between the dominant elements (Service 1998, p. 20).

These openings within the vegetation community should be free of nonnative invasive plant species. Not only do invasive, nonnative plants physically exclude *Chorizanthe pungens* var. *pungens* seedlings, but many of the hymenopteran (members of the insect order that includes bees, wasps, and ants) pollinators important to *Chorizanthe* pollination (e.g., sphecid wasps, bumblebees, and bees from the families Halictidae and Anthophoridae) require bare ground for nesting (Murphy 2003a, p. 4). Removal of invasive, nonnative species may help to maintain existing rates of pollinator visitation. Although areas with little or no cover of invasive, nonnative species may be optimal for the conservation of *C. p.* var. *pungens,* seeds that could subsequently germinate may still be present beneath the canopy of the nonnative, invasive plants.

Conservation of *Chorizanthe pungens* var. *pungens* depends not only on adequate space for growth, but also on maintaining the dynamic nature of *C. p.* var. *pungens* habitat, which ensures the availability of microsites appropriate for germination and growth. Coastal dune communities are subject to natural dynamic processes that create suitable openings in scrub and chaparral communities (Cooper 1967, pp. 63–72; Barbour and Johnson 1988, p. 242). Shifts in habitat composition caused by patterns of dune mobilization that create openings suitable for *C. p.* var. *pungens* are followed by stabilization and successional trends in coastal dune scrub that result in increased vegetation cover over time (Barbour and Johnson 1988, p. 242). Accordingly, over time there are shifts in the distribution and size of individual colonies of *C. p.* var. *pungens* found in the gaps between shrub vegetation. In most years, one can find patches of plants separated by several feet (meters) or several hundred feet (meters) within a particular area. In following years, the distribution of plants may shift due to seed dispersal by animals or wind, emergence of seeds from a relatively short-lived soil seed bank, and/or fire that has opened up the vegetation canopy, creating a site suitable for germination of seeds and growth of this taxon.

Human-caused disturbances, such as scraping of roads and firebreaks, can reduce the competition from other herbaceous species and consequently provide temporarily favorable conditions for *Chorizanthe pungens* var. *pungens.* This has been observed at former Fort Ord where *C. p.* var. *pungens* occurs along the margins of dirt roads (Army Corps of Engineers (Corps) 1992, p. 39; U.S. Bureau of Land Management (BLM) 2003, pp. 15–22). However, such activities also often promote the spread and establishment of nonnative species (Fusari and McStay 2007, p. 9); in addition, they can bury the seedbank of *C. p.* var. *pungens,* and they do not result in the cycling of nutrients and soil microbial changes that are associated with large-scale natural disturbances such as fires (Stylinski and Allen 1999, pp. 544–554; Keeley and Keeley 1989, pp. 67–70). In one case, *C. p.* var. *pungens* had been initially abundant in disturbed soils where its seeds had been scattered, but it subsequently declined in abundance even though seemingly suitable open habitat persisted (Slattery 2007, pp. 1–3). This type of management may not sustain populations over the long term and would likely result in a general degradation of habitat for *C. p.* var. *pungens* if conducted over large areas.

Conservation of *Chorizanthe pungens* var. *pungens* depends on adequate space to promote pollinator activity and minimize the edge effects associated with urban development. Larger areas with a high area-to-edge ratio are less likely to be affected by the range of human activities that would alter adjacent *C. p.* var. *pungens* habitat. Potential edge effects identified for other *Chorizanthe* species that may also affect *C. p.* var. *pungens* include the introduction of nonnative plants (e.g., landscaping plants), roadside mowing for fuel reduction, informal recreation, trash and landscape waste dumping, hydrologic changes from landscape watering or increased paved surfaces, and pesticide drift (Conservation Biology Institute 2000, pp. 6–17). Large occurrences of *C. p.* var. *pungens* are more likely to attract insect pollinators necessary for gene flow and the production of viable seed, are better able to withstand periodic extreme environmental stresses (e.g., drought, disease), and may act as important ''source'' populations to allow recolonization of surrounding areas following periodic extreme environmental stresses (Schemske et al., pp. 584–588). Small patches of plants have been documented to suffer reproductive failure due to lack of effective pollination when critical thresholds of isolation were exceeded. In contrast, sufficiently large patches of plants attracted pollinators regardless of their degree of isolation (Groom 1998, p. 487). However, small populations of plants may serve other functions that support the long-term persistence of the species. They may serve as corridors for gene flow between larger populations, and may harbor greater levels of genetic diversity than predicted for their size (Lesica and Allendorf 1991, pp. 172–175).

Chorizanthe pungens var. *pungens* appears to function as an opportunistic annual plant, with most of its seeds germinating under variable winter conditions rather than persisting to create an extensive, long-lasting soil seed bank (Fox *et al.* 2006, p. 168). This highlights the importance of protecting above-ground plants from germination through seed set each year (approximately December through the following September), as it appears the persistence of *C. p.* var. *pungens* relies on successful seed set from the previous year in addition to adequate climatic conditions. This has implications for the amount of successive disturbance that *C. p.* var. *pungens* can endure and still persist. Management activities that are used for nonnative, invasive species removal, such as mowing, must be conducted in a manner that does not adversely affect seed development in the *C. p.* var. *pungens* population; otherwise, it is unlikely to be compatible with the long-term persistence of *C. p.* var. *pungens.*

Areas That Provide the Basic Requirements for Growth (Such as Water, Light, and Minerals)

Chorizanthe pungens var. *pungens* occurs on sandy soils with a variable origin, including active dunes, interior fossil dunes, and floodplain alluvium (Service 1998, pp. 1–13, 20). The most prevalent soil series represented are coastal beaches, dune sand, Baywood sand, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold-Santa Ynez complex, Metz loamy sand, and Metz complex (Soil Conservation Service 1978, pp. 13–73; 1980, pp. 9–81). Sites where *C. p.* var. *pungens* occurs are generally bare, sandy patches free of other vegetation (Zoger and Pavlik 1987, unpaginated). On the coast, it occurs in coastal dune scrub and chaparral communities (Service 1998, pp. 19–20; CNDDB 2006). *Chorizanthe pungens* var. *pungens* does not occur under dense stands of

vegetation, but will occur between more widely spaced shrubs or gaps in the shrub vegetation. At more inland sites, *C. p.* var. *pungens* occurs on sandy, well-drained soils in a variety of habitat types, most frequently maritime chaparral, valley oak woodlands, and grasslands (CNDDB 2006). In grassland and oak woodland communities, abundant annual grasses may outcompete *C. p.* var. *pungens*, but in places where grass species are controlled through grazing, mowing, or fire activities that are appropriate in timing and intensity, *C. p.* var. *pungens* may persist (*e.g.*, Zander Associates 2003, pp. B.22–B.24; Fusari 2007, p. 2). Additional specific information about the native plant communities associated with *C. p.* var. *pungens* can be found in the listing rule notice (59 FR 5499) and the previous final critical habitat designation (67 FR 37498).

Primary Constituent Element for Chorizanthe pungens var. pungens

Under the Act and its implementing regulations, we are required to identify the known physical and biological features within the geographical area occupied by *Chorizanthe pungens* var. *pungens* at the time of listing that are essential to the conservation of the species and that may require special management considerations or protections.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCE for *Chorizanthe pungens* var. *pungens* is a vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, or clumps of herbaceous vegetation) that changes in spatial position as a result of physical processes such as windblown sands and fire and that allows sunlight to reach the surface of the following sandy soils: coastal beaches, dune land, Baywood sand, Ben Lomond sandy loam, Elder sandy loam, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold-Santa Ynez complex, Metz complex, and Metz loamy sand.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area determined to be occupied at the time of listing contain the physical and biological features that are essential to the conservation of the species and may require special management considerations or protection.

The known occurrences of *Chorizanthe pungens* var. *pungens* are threatened by direct and indirect effects from habitat fragmentation and loss and edge effects resulting from urban development. Examples of edge effects include increases in invasive, nonnative species and increased trampling and soil compaction from recreation (Conservation Biology Institute 2000, p. 5). Additional threats include road development, invasive species control with herbicides, industrial and recreational development, equestrian and other recreational activities, and dune stabilization using nonnative species (59 FR 5499). Threats that could result in unfavorable disturbance intensity, frequency, or timing and can destroy individual plants or deplete any associated seed bank include road maintenance, invasive species control, and fire suppression. These threats may require special management considerations or protection to ensure the long-term conservation of *C. p.* var. *pungens* and are described below in the individual discussions of the units.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available in determining areas that contain the physical and biological features that are essential to the conservation of *Chorizanthe pungens* var. *pungens*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, State, and local agencies and private corporations; site visits; regional GIS layers, including soil and species coverages; and data submitted to the CNDDB. We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, our recovery plan for the species, and information received from local species experts. We are not designating any areas outside of the geographical area occupied by the species at the time of listing because we believe the areas we have designated provide sufficient essential habitat for the conservation of the species; therefore, unoccupied areas are not needed in the designation.

The long-term conservation of *Chorizanthe pungens* var. *pungens* is dependent upon the protection of existing population sites and the quantity and spatial arrangement of the PCE and essential habitat that provides for the maintenance of ecologic functions, such as connectivity between populations within close geographic proximity to facilitate pollinator activity and seed dispersal.

Determining the specific areas that this taxon occupies is challenging for several reasons: (1) The distribution of *Chorizanthe pungens* var. *pungens* appears to be more closely tied to the presence of sandy soils and openings in the surrounding vegetation than to specific plant communities, because plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may either favor the presence of *C. p.* var. *pungens* or not; (2) the way the current distribution of *C. p.* var. *pungens* is mapped varies depending on the scale at which patches of individuals were recorded (e.g., many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the species' distribution may either shrink and temporarily disappear, or enlarge and cover a more extensive area.

We used a multi-step process to identify and delineate critical habitat units. First we mapped all CNDDB records of *Chorizanthe pungens* var. *pungens* known at the time of the final listing in a GIS format. These data consist of points and polygons depicting the results of field surveys. Additional records from recent surveys that have been reported to the CNDDB but have not yet been entered into their database were also mapped in GIS format. These surveys provided more detailed distribution information for *C. p.* var. *pungens* within and around known occurrences, but did not extend the known range of the taxon. We then selected sites from among this data set that contain the physical and biological features essential to the conservation of *C. p.* var. *pungens,* that may require special management considerations or protection, and would result in a designation that: (a) Represents the geographical range of the species, and captures peripheral populations; (b) encompasses large occurrences in large areas of contiguous native habitat, as these have the highest likelihood of persisting through the environmental extremes that characterize California's climate and of retaining the genetic variability to withstand future introduced stressors (e.g., new diseases, pathogens, or climate change); (c) includes the range of plant communities

and soil types in which *C. p.* var. *pungens* is found, (d) maintains connectivity of occurrences; (e) maintains the disturbance factors that create the openings in vegetation cover on which this taxon depends; and (f) provides for the sufficient quantity and spatial arrangement of the PCE to provide for the conservation of the species.

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Scott *et al.* 2001, pp. 1297–1300); therefore, critical habitat should include multiple locations across the entire range of the species to prevent range collapse. Protecting peripheral or isolated populations is highly desirable because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt 1996, pp. 291–295). We also sought to include the range of plant communities, soil types, and elevational gradients in which *Chorizanthe pungens* var. *pungens* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt 1996, pp. 299–301; Millar and Libby 1991, pp. 150, 152–155). Finally, habitat fragmentation can result in loss of genetic variation (Young *et al.* 1996, pp. 413–417); therefore, we sought to maintain connectivity between patches or occurrences of plants.

Once we identified all areas that contain the physical and biological features essential to the conservation of the species, we focused first on those areas that were either already protected, managed, or otherwise unencumbered by conflicting use (e.g., undeveloped County or City parks, proposed preservation areas). Populations in these areas are most likely to persist into the future and to contribute to the species' survival and recovery. We prioritized our selection in the following manner: First we included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented, non-profit organization, or undeveloped County or City parks), and finally other agency and private lands.

After applying the criteria described above, the lands we are designating as revised critical habitat fall under prong one of the definition of critical habitat in section 3(5)(A) of the Act (see ''Critical Habitat'' section). We did not identify any lands outside of the geographical area occupied by the species at the time of listing as essential to the conservation of the species.

Mapping

To map the critical habitat units, we overlaid *Chorizanthe pungens* var. *pungens* records on soil series data and, where available, vegetation data (e.g., maritime chaparral mapped by Van Dyke and Holl (2003)) to determine appropriate areas that would contain the physical and biological features essential to the conservation of *C. p.* var. *pungens.* This taxon is closely tied to the presence of sandy soil types, and occurrences are generally scattered in gaps between vegetation within appropriate soil types. Units were delineated by first mapping the occurrences and soil types and then considering other geographic features such as developed areas and road boundaries.

When determining critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, paved areas, and other structures, as well as tilled fields, row crops, and golf courses that lack the features essential for the conservation of *Chorizanthe pungens* var. *pungens.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat designation have been excluded by text and are not designated as revised critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would affect the primary constituent elements in the adjacent critical habitat.

A brief discussion of each area designated as revised critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical Habitat Designation

We are designating nine units as revised critical habitat for *Chorizanthe pungens* var. *pungens.* These units, which generally correspond to those units in the 2002 designation, entirely replace the 2002 critical habitat designation for *C. p.* var. *pungens* in 50 CFR 17.96(a). The critical habitat units we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *C. p.* var. *pungens.* Table 1 shows the occupied units.

TABLE 1.—OCCUPANCY OF CHORIZANTHE PUNGENS VAR. PUNGENS BY REVISED CRITICAL HABITAT UNITS

Unit	Occupied at time of listing?	Currently occupied?	Size of unit in acres (hectares)
1. Sunset	Yes	Yes	85 (35)
2. Moss Landing	Yes	Yes	250 (101)
3. Marina	Yes	Yes	881 (357)
4. Asilomar	Yes	Yes	48 (19)
5. Freedom Blvd	Yes	Yes	24 (10)
6. Manresa	Yes	Yes	94 (38)
7. Prunedale	Yes	Yes	190 (77)
8. Fort Ord	Yes	Yes	9,432 (3,817)
9. Soledad	Yes	Yes	51 (21)

The nine units designated as revised critical habitat are: Sunset (Unit 1), Moss Landing (Unit 2), Marina (Unit 3), Asilomar (Unit 4), Freedom Boulevard (Unit 5), Manresa (Unit 6), Prunedale (Unit 7), Fort Ord (Unit 8), and Soledad (Unit 9). The approximate area encompassed within each critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS FOR CHORIZANTHE PUNGENS VAR. PUNGENS

[Area estimates reflect all land within critical habitat unit boundaries]

Unit name	State lands		Private lands		County and other local jurisdictions		Federal lands		Estimate of total area	
	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares
1. Sunset	85	35	0	0	0	0	0	0	85	35
2. Moss Landing	224	91	20	8	6	2	0	0	250	101
3. Marina [1]	881	357	0	0	0	0	0	0	881	357
4. Asilomar	40	16	0	0	4	2	4	1	48	19
5. Freedom Blvd	0	0	24	10	0	0	0	0	24	10
6. Manresa	94	38	0	0	0	0	0	0	94	38
7. Prunedale	155	63	17	7	18	7	0	0	190	77
8. Fort Ord [1]	606	245	0	0	654	265	8,172	3,307	9,432	3,817
9. Soledad	0	0	51	21	0	0	0	0	51	21
Approximate Total	2,085	844	112	46	682	276	8,176	3,309	11,055	4,475

[1] Area estimates assigned to various landowner categories for the Fort Ord and Marina units (on former Fort Ord) reflect future land recipient, as indicated by 2006 Army records.

We present descriptions of all units, and reasons why they meet the definition of critical habitat for *Chorizanthe pungens* var. *pungens,* below.

Unit 1: Sunset (85 ac (35 ha))

This unit consists of coastal beaches, dunes, and bluffs located west of Watsonville in southern Santa Cruz County. Unit 1 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils primarily in the coastal beach, dune land, and Baywood sand series (Soil Conservation Service 1978, pp. 13–25; 1980 (maps)) (PCE 1). This unit was occupied at the time of listing (59 FR 5499) and is currently occupied (CNDDB 2006, California Department of Parks and Recreation (CDPR) 2006a). This unit consists exclusively of State land (85 ac (35 ha)) and is entirely within the boundaries of Sunset State Beach. The unit includes land from Sunset Beach Road south to the gate on Shell Road, just north of the mouth of the Pajaro River, and west of Shell Road, which extends the length of Sunset State Beach. Unit 1 is essential because it supports a large population of *Chorizanthe pungens* var. *pungens* that in some years numbers in the tens of thousands (CNDDB 2006; CDPR 2006a). The features essential to the conservation of the species may require special management considerations or protection in this unit due threats from invasive, nonnative plants, particularly European beachgrass, which forms dense stands on coastal beaches and crowds out *C. p.* var. *pungens,* and from recreational activities, including camping and foot traffic, which could trample plants.

Unit 2: Moss Landing (250 ac (101 ha))

This unit consists of coastal beaches, dunes, and bluffs to the north and south of the community of Moss Landing in northern Monterey County. Unit 2 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the coastal beach and dune land series (Soil Conservation Service 1978, pp. 13–25) (PCE 1). The northern portion of this unit includes lands owned and managed by the State (which includes portions of Zmudowski State Beach and Moss Landing State Beach between the mouths of the Pajaro River and Elkhorn Slough), 20 ac (8 ha) of private lands, and 6 ac (2 ha) of county lands. The southern portion of this unit includes State lands within Salinas River State Beach. This unit was occupied at the time of listing (59 FR 5499) and was included in the previous critical habitat designation. Herbarium records indicate that this site was occupied as early as 1933, and has remained occupied through time (Consortium of California Herbaria 2006 cites collections by H.S. Tates 1936; T. Craig 1933; and J. Thomas 1950). *Chorizanthe pungens* var. *pungens* was also recently observed in this unit (CDPR 2006b, unpaginated). This unit contains one of only five populations found along the coast, and it may provide connectivity between the Sunset Unit to the north and the Marina Unit to the south. The features essential to the conservation of the species may require special management considerations or protection in this unit due threats from invasive, nonnative plants, particularly ice-plant, which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*, and from recreational activities including foot traffic, which could trample plants.

Unit 3: Marina (881 ac (357 ha))

This unit consists of coastal beaches, dunes, and bluffs ranging from just south of the mouth of the Salinas River, south to the city of Monterey in northern Monterey County; these lands are entirely west of Highway 1. Unit 3 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the coastal beach, dune land, and Oceano loamy sand soil series (Soil Conservation Service 1978, pp. 13–25, 54–55) (PCE 1). This unit was occupied at the time of listing (59 FR 5499) and it is currently occupied (CNDDB 2006; CDPR 2006; Service 2002, p. 54). Unit 3 is comprised of State lands, including Marina State Beach and Monterey State Beach. This unit is essential because it supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands in some years (CNDDB 2006; Service 1998, p. 67); it is the southernmost of the Monterey Bay area coastal populations; and it may provide connectivity between the populations along the coast and the more interior populations found at former Fort Ord. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants, particularly ice-plant, which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*;

recreational activities such as foot traffic, which could result in the trampling of plants; and edge effects of urban development.

Unit 4: Asilomar (48 ac (19 ha))

This unit consists of coastal dunes and bluffs near the communities of Pacific Grove and Pebble Beach on the Monterey Peninsula in northern Monterey County. This unit includes a portion of Asilomar State Beach, and extends just beyond Lighthouse Avenue to the north and terminates at the boundary of the Asilomar Conference Grounds. This unit's eastern boundary extends from Highway 68 north along Asilomar Avenue, and then turns west on Arena Avenue where the boundary connects to Sunset Drive. Unit 4 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the coastal beach, dune land, and Baywood sand soil series (Soil Conservation Service 1978, pp. 13–25) (PCE 1). This unit is comprised of 4 ac (1 ha) of Federal lands, 40 ac (16 ha) of State lands at Asilomar State Beach, and 4 ac (2 ha) of local government ownership. This unit was occupied at the time of listing (59 FR 5499) and is currently occupied. Herbarium records that contain specimens from this area include the following (collector and year): Lemmon 1881, L.C. Wheeler 1936, R. Hoover 1941 and 1963, and L.S. Rose 1963 (Consortium of California Herbaria 2006)). This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the hundreds (Moss 2000, unpaginated). This unit is essential because it is the southernmost of only five populations of *C. p.* var. *pungens* along the coast. Preserving the genetic characteristics that have allowed individuals at this site to survive at the southern end of the species' range along the coast is essential to the long-term survival and conservation of *C. p.* var. *pungens*. Protecting peripheral or isolated populations is necessary because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt 1996, pp. 291–295). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants, particularly ice-plant, which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*; recreational activities such as foot traffic which could trample plants; and edge effects of urban development. An additional threat in this unit is the expansion of unregulated vehicle parking in the dunes associated with the high numbers of visitors this area receives each year.

Unit 5: Freedom Boulevard (24 ac (10 ha))

This unit consists of grassland, maritime chaparral, and oak woodland habitat near the western terminus of Freedom Boulevard and northeast of Highway 1 in Santa Cruz County. This unit consists entirely of private lands (24 ac (10 ha)). Unit 5 contains space for individual and population growth, including sites for seed dispersal and germination; provides for the basic requirements for growth; and includes soils in the Baywood sand and Ben Lomond sandy loam series (Soil Conservation Service 1980, pp. 64–65; maps) (PCE 1). This unit was occupied at the time of listing (59 FR 5499) and is currently occupied (CNDDB 2006, element occurrences (EOs) 32 and 34; Morgan 2006, unpaginated). This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands in favorable years, but many fewer in unfavorable years (CNDDB 2006, EOs 32, 34). This unit is essential because it is the northernmost known occurrence. In the absence of genetic data, protecting populations at the boundaries of a taxon's range is necessary because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt 1996, pp. 291–295). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants, particularly annual grasses that crowd out *C. p.* var. *pungens*, and from edge effects of urban development.

Unit 6: Manresa (94 ac (38 ha))

This unit consists of coastal bluffs along the immediate coast, south of Seacliff State Beach and north of Sunset State Beach in Santa Cruz County. Unit 6 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the coastal beach, Baywood sand, and Elder sandy loam series (Soil Conservation Service 1980, pp. 11–70, maps) (PCE 1). This unit is comprised entirely of lands owned and managed by the State at Manresa State Beach. This unit was occupied at the time of listing (59 FR 5499) and is currently occupied. This unit is essential because it is the most northerly population that is known from the immediate coast and provides connectivity to populations in the Sunset Unit to the south. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants and from recreational activities such as foot traffic, which could trample plants.

Unit 7: Prunedale (190 ac (77 ha))

This unit consists of grassland, maritime chaparral, and oak woodland in the area around Prunedale in northern Monterey County. On the west side of Highway 101, the unit includes the Manzanita County Park subunit located between Castroville Boulevard and San Miguel Canyon Road. On the east side of Highway 101, the unit consists of four additional subunits. The five subunits support similar plant communities and need similar types of special management; therefore, we discuss them as a unit. Unit 7 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the Arnold loamy sand, Santa Ynez fine sandy loam, and Arnold-Santa Ynez complex series (Soil Conservation Service 1978, pp. 9–11, 72–73) (PCE 1). This unit consists of 155 ac (63 ha) of State lands, 18 ac (7 ac) of local agency lands (Manzanita County Park), and 17 ac (7 ha) of Pacific Gas and Electric easement lands. This unit was occupied at the time of listing, was included in our listing rule in reference to the Prunedale area (59 FR 5499), and is currently occupied (Caltrans 2001; Consortium of California Herbaria 2006). This unit is essential because it is one of only four units that are known to support populations in maritime chaparral and oak woodland habitats more representative of hotter, interior sites and is the easternmost of the units in the interior hills. The features essential to the conservation of the species may require special management considerations or protections in this unit due to threats from invasive, nonnative plants, which crowd out *Chorizanthe pungens* var. *pungens*; edge effects from urban development; and recreational activities

such as off road vehicles, which can crush plants and destroy seeds.

Unit 8: Fort Ord (9,432 ac (3,817 ha))

This unit consists of grassland, maritime chaparral, coastal scrub, and oak woodland on the former Department of Defense base at Fort Ord, east of the city of Seaside in northern Monterey County. This unit is entirely within the area formerly known as Fort Ord, bounded by Highway 1 on the northwest, the Salinas River to the east, and Monterey-Salinas Road (Highway 68) on the south. Approximately 87 percent of this critical habitat unit is Federal land (8,172 ac (3,307 ha)) managed by BLM and the Army, 6 percent is State land (606 ac (245 ha)), and 7 percent is under local jurisdictions (654 ac (265 ha)). Portions of Fort Ord have been transferred to BLM; University of California, California State University at Monterey Bay; and local (city and county) jurisdictions. All of the lands included in this unit are designated as current or future habitat reserves under the Army's habitat management plan (Corps 1997, Attachment A map; Zander Associates 2002, Figures 4–6). About one-half of Unit 8 still must be cleaned of environmental contaminants by the Army before it can be transferred to BLM.

Unit 8 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the Arnold-Santa Ynez complex, Baywood sand, and Oceano loamy sand series (Soil Conservation Service 1978, pp. 9–73). Lands in this unit are intended to be managed at a landscape scale, using prescribed fire, as needed, to maintain a range of different-aged maritime chaparral stands (Corps 1997, pp. 4.24–4.25), and by doing so preserve substantial populations of rare maritime chaparral species in the Monterey Bay area. This unit was occupied at the time of listing (59 FR 5499) and is currently occupied. This unit is essential because it currently supports multiple large populations of *Chorizanthe pungens* var. *pungens* that number in the tens of thousands in some years (CNDDB 2006, EO 2; Jones and Stokes 1992, Figure F–3; BLM 2006), and it is one of only five units that include maritime chaparral and oak woodland habitats more representative of hotter, interior sites. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive species that crowd out *C. p.* var. *pungens*, munitions clean-up methods on former ranges that remove and chip all standing vegetation, and recreational activities and road and trail maintenance that could trample plants.

Unit 9: Soledad (51 ac (21 ha))

This unit consists of an interior dune in the floodplain of the Salinas River channel just south of the city of Soledad in central Monterey County on privately owned lands. Unit 9 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils in the dune land and Metz complex soil series (Soil Conservation Service 1978, pp. 24, 48–49) (PCE 1). This unit was occupied at the time of listing (59 FR 5499) and is currently occupied. Approximately 5,000 plants were observed in this unit in 1994 (CNDDB 2006, EO 28; Wesco 1994, pp. 5–8). This unit is essential because it is the southernmost interior location that supports a population and the only unit where *Chorizanthe pungens* var. *pungens* grows in interior floodplain dune habitat. This population is geographically remote from all others in this revised critical habitat designation. Protecting peripheral or isolated populations of rare species is highly desirable because they may contain genetic variation not found in core populations (Lesica and Allendorf 1995, pp. 755–757). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants, which crowd out *C. p.* var. *pungens*; overspray of herbicides and pesticides from agricultural operations; and vegetation clearing activities associated with road maintenance.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has

retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Chorizanthe pungens* var. *pungens* or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Chorizanthe pungens* var. *pungens*. Generally, the conservation role of *C. p.* var. *pungens* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Chorizanthe pungens* var. *pungens* include, but are not limited to:

(1) Actions that would degrade or destroy native maritime chaparral, dune, and oak woodland communities, including, but not limited to, livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative plants, and heavy recreational use; and

(2) Actions that would appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of nonnative plants or animals, or fragmentation).

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

Lands at former Fort Ord are not discussed in this section because Fort Ord is no longer an active military installation. All but a few hundred acres at former Fort Ord are to be eventually transferred to non-military entities. The few hundred acres that the Army may retain do not occur within this critical habitat designation. There are no Department of Defense lands with a completed INRMP within this final revised critical habitat designation. Therefore, there are no lands exempted from this revised designation under section 4(a)(3) of the Act.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at

any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider the economic impacts, environmental impacts, and any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that while lands proposed for revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* are currently administered by the Department of Defense, all of the lands will be transferred to other landowners. The proposed revised designation did not include any military lands covered by an existing INRMP, any lands covered by a completed HCP for *C. p.* var. *pungens*, or any Tribal lands or trust resources. Therefore, we do not anticipate any impact to national security, Tribal lands, or habitat conservation plans from this critical habitat designation. Based on the best available information, we believe that all of the units contain the physical and biological features essential to *Chorizanthe pungens* var. *pungens*. In addition, as discussed below under the ''Economic Analysis'' section, our economic analysis indicates an overall low economic cost resulting from the revised designation. We have not identified any area for which the benefits of exclusion outweigh the benefits of inclusion; therefore, we have considered excluding, but have not excluded any areas from this revised designation of critical habitat for *C. p.* var. *pungens* based on economic impacts or other relevant factors.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. The Secretary may exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the revised designation. The draft economic analysis was made available for public review on October 16, 2007 (72 FR 58618). We accepted comments on the draft economic analysis until October 31, 2007.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Chorizanthe pungens* var. *pungens*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft economic analysis estimates pre-designation costs associated with the conservation of the species since the time of listing in 1994 to be approximately $5.2 million (undiscounted). Discounted costs are estimated to be approximately $6.2 million at a 3 percent discount rate or approximately $7.9 million at a 7 percent discount rate. The draft economic analysis estimates post-designation costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* to be approximately $17 million (undiscounted) over a 20-year period as a result of the proposed designation of revised critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be approximately $13 million ($0.85 million annualized) at a 3 percent discount rate or approximately $9.6 million ($0.85 million annualized) at a 7 percent discount rate.

The majority of the estimated costs are associated with management activities designed to preserve and enhance habitat for *Chorizanthe pungens* var. *pungens* on lands managed by the California Department of Parks and Recreation, Department of the Army, University of California, and the Bureau of Land Management. The economic analysis considers the potential economic effects of actions relating to the conservation of *Chorizanthe pungens* var. *pungens*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Chorizanthe pungens* var. *pungens* in areas containing the features essential to the conservation of the species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the revised designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date *Chorizanthe pungens* var. *pungens* was listed as threatened (February 4, 1994; 59 FR 5499), and considers those costs that may occur in the 20 years following a designation of revised critical habitat. We evaluated the potential economic impact of this revised designation as identified in the analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time.

The Service also completed a final economic analysis of the proposed revised designation that updates the draft economic analysis by removing impacts that were not considered probable or likely to occur and by adding an estimate of the costs associated solely with the revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* (incremental impacts). The final economic analysis estimates that the potential economic effects of actions relating to the conservation of *C. p.* var.

pungens, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of revised critical habitat will be $17 million (undiscounted) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is $13 million ($0.85 million annualized); or $9.6 million ($0.85 million annualized), using a discount rate of 7 percent. These cost estimates are the same as those estimated in the draft economic analysis. The final economic analysis also estimates that there are no anticipated costs attributable solely to the designation of revised critical habitat for *C. p.* var. *pungens* (incremental costs). All impacts quantified in the economic analysis are forecast to occur regardless of the revised critical habitat designation for *C. p.* var. *pungens*.

A copy of the final economic analysis with supporting documents may be obtained by contacting U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** or download from the Internet at *http://www.fws.gov/ventura*).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866 (E.O. 12866), we evaluate four parameters in determining whether a rule is significant. The four parameters that would result in a designation of significant under E.O. 12866 are:

(a) The rule would have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) The rule would create inconsistencies with other Federal agencies' actions.

(c) The rule would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) The rule would raise novel legal or policy issues.

If the Office of Management and Budget (OMB) requests to review a rule designating critical habitat for a species, we designate the rule as significant because it may raise novel legal and policy issues. We then use the DEA of the proposed designation of critical habitat to evaluate the potential effects related to the other provisions of E.O. 12866 and make a determination as to whether the regulation may be significant for any of these other provisions.

In accordance with E.O. 12866, this document is not a significant rule since OMB did not request to review this rule. On the basis of our economic analysis of the revised critical habitat for this species, we have determined that the revised final designation of critical habitat for this species will not have an annual effect on the economy of $100 million or more or to affect the economy in a material way. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific area as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2) of the Act. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

The designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* will not create inconsistencies with other agencies'' actions because no other Federal agencies designate critical habitat. Based on previous critical habitat designations and the economic analysis, we do not believe this rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; however, we will continue to review this action for such impacts.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate.

However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7(a)(2) of the Act on activities they fund, permit, or implement that may affect *Chorizanthe pungens* var. *pungens*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

To determine if the revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement.

In our draft economic analysis of the proposed revised critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Chorizanthe pungens* var. *pungens* and proposed designation of revised critical habitat. We determined from our draft analysis that the small business entities that could potentially be affected include one city government (City of Pacific Grove), and one private farm. However, costs were not associated with the City of Pacific Grove or the private farm because they are not currently required to undertake actions to conserve the species and there is a low likelihood that their actions will involve a federal nexus in the future. A third entity, the Fort Ord Reuse Authority (FORA), was created by the State legislature in 1994, to oversee the civilian reuse and redevelopment of former Fort Ord. It sunsets in 2014, after which lands that it may have been managing on former Fort Ord may be jointly managed by multiple local governments. The Habitat Conservation Plan (HCP) currently being developed that will define the future distribution and management of former Fort Ord lands has not been completed. Therefore, for the purpose of the draft and final economic analysis, FORA was not classified as a small entity. Based on our economic analysis, we certify that the rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (see **ADDRESSES** for information on obtaining a copy of the final economic analysis).

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Prunedale, Unit 7) contains 17 ac (7 ha) of land held in a conservation easement owned by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of revised critical habitat is not expected to have an adverse effect on energy production. This final rule to designate revised critical habitat for *Chorizanthe pungens* var. *pungens* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal

funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* and the ''Regulatory Flexibility Act'' section above, there is expected to be no impact on small governments or small entities. There is no record of consultations between the Service and any of these governments since *C. p.* var. *pungens* was listed as threatened on February 4, 1994 (59 FR 5499). It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving consultations under section 7 of the Act for *C. p.* var. *pungens* within their jurisdictional areas. As identified in the draft economic analysis, any costs associated with this activity are likely to represent a small portion of a local government's budget. Costs were not associated with the City of Pacific Grove because it is not currently required to undertake actions to conserve the species and there is a low likelihood that their actions will involve a federal nexus in the future. Consequently, we do not believe that the designation of revised critical habitat for *C. p.* var. *pungens* will significantly or uniquely affect these small governmental entities because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of revised critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for *Chorizanthe pungens* var. *pungens* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of revised critical habitat for *C. p.* var. *pungens* does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California. However, we did not receive any comments from these State agencies. The designation of revised critical habitat in areas currently occupied by *Chorizanthe pungens* var. *pungens* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have a slight incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the primary constituent element of the habitat necessary to the conservation of the species is specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating revised critical habitat in accordance with the provisions of the Act. This revised final rule uses standard property descriptions and identifies the primary constituent element within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe pungens* var. *pungens*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit Court (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands occupied at the time of listing or currently occupied that contain the physical and biological features essential for the conservation,

and no Tribal lands that are unoccupied areas essential for the conservation of *Chorizanthe pungens* var. *pungens*. Therefore, revised critical habitat for *C. p.* var. *pungens* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Venture Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary author of this rulemaking is the staff of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.96(a), revise the entry for ''Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey Counties, California, on the maps below.

(2) The primary constituent element of critical habitat for *Chorizanthe pungens* var. *pungens* is a vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, or clumps of herbaceous vegetation) that changes in spatial position as a result of physical processes such as windblown sands and fire and that allows sunlight to reach the surface of the following sandy soils: coastal beaches, dune land, Baywood sand, Ben Lomond sandy loam, Elder sandy loam, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold—Santa Ynez complex, Metz complex, and Metz loamy sand.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, and roads) and the land on which such structures are located, existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program (aerial imagery captured June 2005). Data were projected to Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983.

(5) Note: Index map (Map 1) follows:

BILLING CODE 4310–55–P

MAP 1 - Index Map
Critical Habitat for Chorizanthe pungens var. pungens
(Monterey Spineflower)
Monterey and Santa Cruz Counties, California
Santa Cruz County
17
101
Unit 5
Unit 6
Unit 1
MAP 2
Monterey Bay
San Benito County
Unit 2
Unit 7
1
MAP 3
Unit 3
Unit 8
Unit 4
68
101
MAP 4
Monterey County
Unit 9
MAP 5
Critical Habitat for Chorizanthe pungens var. pungens
Roads / Highways
County Boundaries
0 1 2 4 6 Miles
Kilometers
0 2 4 8 12
N
Area of Detail

(6) Unit 1: Sunset Unit, Santa Cruz County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 603929, 4083699; 604051, 4083487; 604059, 4083449; 604045, 4083383; 604045, 4083351; 604091, 4083265; 604106, 4083164; 604122, 4083147; 604176, 4083117; 604222, 4083063; 604255, 4083022; 604279, 4083005; 604325, 4082960; 604349, 4082925; 604373, 4082842; 604412, 4082708; 604424, 4082671; 604426, 4082579; 604449, 4082515; 604460, 4082474; 604491, 4082428; 604504, 4082397; 604510, 4082350; 604527, 4082300; 604546, 4082248; 604535, 4082205; 604688, 4081900; 604847, 4081649; 604743, 4081648; 604613, 4081903; 604338, 4082450; 604205, 4082695; 604132, 4082828; 603987, 4083070; 603703, 4083577; returning to 603929, 4083699.

(ii) Note: Map of Units 1, 5, and 6 (Map 2) follows:

MAP 2 - Units 1, 5, and 6
Critical Habitat for Chorizanthe pungens var. pungens
(Monterey Spineflower)
Santa Cruz County, California
Unit 5
Aptos
Freedom Blvd.
1
Manresa State Beach
Unit 6
Watsonville
San Andreas Rd.
129
Sunset State Beach
Unit 1
Santa Cruz County
Monterey County
Critical Habitat for Chorizanthe pungens var. pungens
Roads / Highways
County Boundaries
0 1 2 Miles
0 2 4 Kilometers
N
Area of Detail

(7) Unit 2: Moss Landing Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 606846, 4077325; 606856, 4077319; 606883, 4077322; 606936, 4077244; 607001, 4076989; 607221, 4076534; 607207, 4076523; 607206, 4076512; 607216, 4076487; 607238, 4076472; 607272, 4076417; 607272, 4076386; 607298, 4076371; 607309, 4076358; 607302, 4076347; 607281, 4076295; 607281, 4076279; 607281, 4076268; 607363, 4076215; 607402, 4076180; 607386, 4076154; 607385, 4076136; 607405, 4076130; 607447, 4076140; 607463, 4076129; 607474, 4076104; 607446, 4076087; 607459, 4076071; 607468, 4076053; 607462, 4076033; 607463, 4076012; 607478, 4075951; 607520, 4075917; 607562, 4075871; 607571, 4075831; 607568, 4075796; 607574, 4075776; 607613, 4075747; 607633, 4075682; 607659, 4075646; 607659, 4075637; 607654, 4075633; 607631, 4075619; 607636, 4075576; 607597, 4075556; 607690, 4075440; 607823, 4075301; 607910, 4075107; 607947, 4074934; 607954, 4074719; 608021, 4074544; 608058, 4074335; 607999, 4074277; 607936, 4074603; 607872, 4074869; 607801, 4075108; 607725, 4075268; 607599, 4075459; 607507, 4075612; 607438, 4075772; 607271, 4076054; 607170, 4076277; 607008, 4076687; 606805, 4077227; 606661, 4077584; 606561, 4077910; 606454, 4078187; 606601, 4078347; 606679, 4078021; 606792, 4077578; 606824, 4077463; 606863, 4077367; 606841, 4077344; returning to 606846, 4077325.

(ii) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 607903, 4073162; 608016, 4073442; 608084, 4073399; 607962, 4073136; returning to 607903, 4073162.

(iii) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 607228, 4070373; 607310, 4070736; 607328, 4070904; 607348, 4071016; 607384, 4071156; 607514, 4071712; 607717, 4072508; 607772, 4072783; 607853, 4073038; 607914, 4073020; 607895, 4072915; 607865, 4072861; 607783, 4072474; 607787, 4072361; 607718, 4072182; 607621, 4071731; 607609, 4071579; 607619, 4071527; 607625, 4071342; 607616, 4071320; 607621, 4071220; 607596, 4071153; 607592, 4071096; 607570, 4071047; 607576, 4071014; 607648, 4070995; 607689, 4070941; 607666, 4070915; 607668, 4070868; 607631, 4070839; 607679, 4070781; 607677, 4070715; 607710, 4070665; 607739, 4070545; 607696, 4070507; 607689, 4070486; 607670, 4070465; 607654, 4070436; 607649, 4070398; 607502, 4070309; 607230, 4070348; returning to 607228, 4070373.

(iv) Note: Map of Units 2 and 7 (Map 3) follows:

MAP 3 - Units 2 and 7
Critical Habitat for *Chorizanthe pungens* var. *pungens*
(Monterey Spineflower)
Monterey County, California
Unit 2
Unit 2
Unit 7
Unit 7
Unit 7
Moss Landing
Prunedale
1
1
156
101
183
Critical Habitat for *Chorizanthe pungens* var. *pungens*
Roads / Highways
County Boundaries
0 1 2 Miles
0 2 4 Kilometers
N
Area of Detail

(8) Unit 3: Marina Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 603550, 4054338; 603691, 4054583; 603944, 4055018; 604173, 4055496; 604429, 4056021; 604819, 4056877; 605042, 4057450; 605354, 4058252; 605565, 4058848; 605837, 4059750; 605918, 4060031; 606155, 4061060; 606282, 4061745; 606320, 4062114; 606653, 4061944; 606642, 4061777; 606595, 4061605; 606497, 4061365; 606456, 4061248; 606413, 4061089; 606388, 4060903; 606384, 4060755; 606390, 4060633; 606431, 4060406; 606349, 4060385; 606398, 4060148; 606370, 4060069; 606443, 4060021; 606446, 4059958; 606490, 4059933; 606225, 4059382; 606099, 4059154; 605974, 4058942; 605942, 4058878; 605861, 4058673; 605779, 4058394; 605739, 4058410; 605709, 4058346; 605679, 4058361; 605597, 4058304; 605587, 4058210; 605728, 4058160; 605683, 4058028; 605674, 4057900; 605681, 4057671; 605667, 4057538; 605662, 4057406; 605671, 4057317; 605690, 4057220; 605712, 4057147; 605763, 4057024; 605756, 4056939; 605731, 4056910; 605457, 4056766; 605429, 4056741; 605335, 4056560; 605360, 4056447; 605356, 4056395; 605232, 4056155; 605212, 4056093; 604940, 4055894; 604498, 4055349; 604397, 4055203; 604345, 4055087; 604323, 4055018; 604254, 4054897; 604077, 4054661; 604008, 4054566; 603934, 4054465; 603914, 4054402; 603758, 4054196; 603755, 4054189; 603737, 4054200; 603550, 4054338; 604416, 4055878; 604427, 4055852; 604451, 4055848; 604497, 4055868; 604526, 4055905; 604560, 4055938; 604613, 4055965; 604651, 4056003; 604699, 4056069; 604731, 4056138; 604736, 4056182; 604732, 4056242; 604726, 4056273; 604709, 4056296; 604675, 4056304; 604634, 4056288; 604613, 4056256; 604609, 4056220; 604632, 4056186; 604631, 4056167; 604605, 4056141; 604599, 4056122; 604602, 4056098; 604599, 4056084; 604568, 4056084; 604524, 4056092; 604513, 4056083; 604512, 4056070; 604528, 4056015; 604522, 4056001; 604501, 4055983; 604475, 4055969; 604459, 4055945; 604456, 4055931; 604438, 4055912; 604416, 4055878.

(ii) Note: Map of Units 3, 4, and 8 (Map 4) follows:

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(9) Unit 4: Asilomar Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 594619, 4053296; 594619, 4053330; 594626, 4053369; 594643, 4053405; 594653, 4053431; 594654, 4053454; 594660, 4053514; 594648, 4053561; 594648, 4053583; 594655, 4053600; 594727, 4053636; 594734, 4053644; 594740, 4053671; 594751, 4053688; 594765, 4053700; 594763, 4053748; 594755, 4053773; 594750, 4053787; 594766, 4053795; 594788, 4053798; 594800, 4053805; 594811, 4053823; 594817, 4053849; 594813, 4053884; 594795, 4053906; 594779, 4053929; 594776, 4053948; 594778, 4053962; 594784, 4053976; 594798, 4054002; 594808, 4054006; 594824, 4054004; 594853, 4053992; 594880, 4053986; 594908, 4053991; 594929, 4054006; 594949, 4054037; 594950, 4054065; 594944, 4054114; 594952, 4054174; 594968, 4054190; 594979, 4054237; 594977, 4054292; 594972, 4054311; 595001, 4054351; 594980, 4054393; 594962, 4054440; 594960, 4054479; 594946, 4054509; 594969, 4054511; 594985, 4054509; 595008, 4054518; 595011, 4054528; 595025, 4054538; 595059, 4054529; 595052, 4054467; 595026, 4054447; 595013, 4054407; 595028, 4054355; 595028, 4054328; 595021, 4054284; 594958, 4054012; 594959, 4054012; 594943, 4053970; 594883, 4053919; 594857, 4053880; 594796, 4053673; 594782, 4053639; 594769, 4053626; 594713, 4053598; 594719, 4053582; 594888, 4053489; 594869, 4053373; 594896, 4053299; 594890, 4053268; 594927, 4053223; 594919, 4053193; 594957, 4053160; 594950, 4053123; 594886, 4053082; 594885, 4053056; 594923, 4053026; 594924, 4052940; 594906, 4052966; 594871, 4053005; 594832, 4053036; 594804, 4053053; 594726, 4053053; 594680, 4053081; 594680, 4053142; 594667, 4053173; 594651, 4053254; returning to 594619, 4053296.

(ii) From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 594873, 4054693; 594913, 4054742; 595038, 4054606; 595057, 4054580; 595062, 4054561; 594921, 4054598; 594905, 4054625; returning to 594873, 4054693.

(iii) Note: Map of Unit 4 is provided at paragraph (8)(ii) of this entry.

(10) Unit 5: Freedom Boulevard Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 601321.000 4093848; 601363, 4093878; 601484, 4093904; 601600, 4093907; 601710, 4093877; 601828, 4093833; 601921, 4093791; 601965, 4093746; 601983, 4093719; 601989, 4093682; 601905, 4093585; 601870, 4093613; 601487, 4093784; 601333, 4093837; returning to 601321, 4093848.

(ii) Note: Map of Unit 5 is provided at paragraph (6)(ii) of this entry.

(11) Unit 6: Manresa Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 602044, 4086559; 602112, 4086716; 602197, 4086682; 602210, 4086694; 602221, 4086722; 602232, 4086754; 602285, 4086738; 602326, 4086722; 602374, 4086749; 602431, 4086877; 602376, 4086900; 602383, 4086914; 602296, 4086951; 602289, 4086937; 602236, 4086959; 602268, 4086998; 602524, 4086894; 602501, 4086838; 602557, 4086814; 602494, 4086665; 602763, 4086296; 602864, 4086162; 602562, 4086054; 602541, 4086096; 602394, 4086067; 602378, 4086099; 602302, 4086085; 602318, 4086053; 602275, 4086044; 602210, 4086186; 602139, 4086348; 602115, 4086409; returning to 602044, 4086559.

(ii) Note: Map of Unit 6 is provided at paragraph (6)(ii) of this entry.

(12) Unit 7: Prunedale Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 618887, 4071619; 618896, 4071742; 619145, 4071725; 619431, 4071664; 619441, 4071576; 619439, 4071574; 619169, 4071562; 619166, 4071601; returning to 618887, 4071619.

(ii) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 621025, 4070792; 621080, 4071114; 621051, 4071111; 621085, 4071163; 621121, 4071173; 621136, 4071182; 621157, 4071219; 621160, 4071234; 621207, 4071274; 621233, 4071259; 621258, 4071205; 621283, 4071171; 621295, 4071168; 621290, 4071132; 621295, 4071048; 621284, 4070900; 621321, 4070847; 621314, 4070833; 621093, 4070705; 621046, 4070723; returning to 621025, 4070792.

(iii) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 620707, 4073069; 620896, 4073161; 620837, 4073252; 620899, 4073326; 620937, 4073319; 621026, 4073386; 621107, 4073506; 621199, 4073608; 621206, 4073579; 621166, 4073526; 621173, 4073436; 621083, 4073322; 621197, 4073259; 621151, 4072949; 621158, 4072940; 621187, 4072867; 621278, 4072572; 621300, 4072385; 621364, 4072301; 621342, 4072258; 621328, 4072169; 621331, 4072151; 621353, 4072139; 621389, 4072155; 621377, 4072009; 621414, 4071899; 621422, 4071791; 621411, 4071786; 621361, 4071747; 621364, 4071718; 621377, 4071704; 621421, 4071702; 621385, 4071615; 621370, 4071533; 621379, 4071479; 621265, 4071449; 621256, 4071455; 621283, 4071501; 621288, 4071541; 621282, 4071565; 621230, 4071628; 621278, 4071792; 621255, 4071940; 621265, 4072089; 621192, 4072091; 621191, 4072183; 621130, 4072185; 621130, 4072300; 621085, 4072462; 621060, 4072649; 621031, 4072686; 621017, 4072730; 621009, 4072808; 620987, 4072831; 620927, 4072859; 620775, 4072954; 620739, 4072948; 620709, 4072962; returning to 620707, 4073069.

(iv) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 620983, 4073724; 621027, 4073754; 620988, 4073922; 620997, 4073968; 620986, 4074025; 621101, 4074125; 621133, 4074174; 621144, 4074209; 621084, 4074270; 621123, 4074335; 621127, 4074380; 621146, 4074396; 621174, 4074395; 621273, 4074228; 621256, 4074215; 621206, 4074150; 621149, 4074028; 621163, 4073968; 621180, 4073920; 621159, 4073901; 621160, 4073898; 621124, 4073845; 621154, 4073750; 621074, 4073707; 621036, 4073609; returning to 620983, 4073724.

(v) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 617547, 4073216; 617576, 4073293; 617656, 4073321; 617785, 4073418; 617979, 4073424; 618019, 4073404; 617985, 4073355; 617733, 4073162; 617632, 4073136; 617572, 4073162; returning to 617547, 4073216.

(vi) Note: Map of Unit 7 is provided at paragraph (7)(iv) of this entry.

(13) Unit 8: Fort Ord Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 609697, 4059326; 609722, 4059410; 610034, 4059231; 610010, 4059188; 610075, 4059114; 610137, 4059066; 610125, 4059051; 610114, 4059037; 610103, 4059024; 610091, 4059012; 610078, 4058998; 610065, 4058986; 609965, 4058895; 609958, 4058903; 609998, 4059020; 609962, 4059186; 609940, 4059175;

609906, 4059214; 609932, 4059260; 609797, 4059338; 609773, 4059296; 609709, 4059308; returning to 609697, 4059326.

(ii) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 610192, 4059594; 610236, 4059663; 610258, 4059655; 610274, 4059651; 610309, 4059651; 610379, 4059665; 610390, 4059664; 610433, 4059733; 610443, 4059751; 610466, 4059785; 610502, 4059762; 610434, 4059652; 610504, 4059609; 610493, 4059592; 610463, 4059611; 610444, 4059619; 610420, 4059623; 610397, 4059620; 610355, 4059601; 610331, 4059591; 610295, 4059584; 610267, 4059581; 610240, 4059582; 610211, 4059588; returning to 610192, 4059594.

(iii) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 608008, 4060536; 609030, 4060994; 609030, 4060995; 609971, 4060407; 609846, 4060206; 610033, 4060089; 609999, 4060034; 610264, 4059868; 610164, 4059707; 610220, 4059673; 610168, 4059589; 610111, 4059623; 609932, 4059336; 609230, 4059739; 609322, 4059793; returning to 608008, 4060536.

(iv) From USGS 1:24,000 scale quadrangle Marina and Salinas. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 609751, 4058616; 610060, 4058898; 610647, 4058564; 610667, 4058598; 610879, 4058745; 612436, 4057852; 612399, 4057799; 612384, 4057756; 612381, 4057739; 612387, 4057693; 612378, 4057650; 612361, 4057603; 612352, 4057589; 612317, 4057541; 612304, 4057508; 612294, 4057462; 612274, 4057395; 611971, 4057411; 611159, 4057399; 611101, 4057397; 611145, 4057519; 611450, 4057629; 611480, 4057720; 611321, 4058012; 610816, 4058291; returning to 609751, 4058616.

(v) From USGS 1:24,000 scale quadrangle Marina, Salinas, Seaside, and Spreckles. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 605408, 4050946; 605410, 4051017; 605417, 4051087; 605436, 4051191; 605522, 4051488; 605602, 4051720; 605630, 4051830; 605627, 4052006; 605600, 4052419; 605601, 4052501; 605607, 4052559; 605617, 4052617; 605630, 4052674; 605647, 4052729; 605669, 4052784; 605755, 4052925; 605799, 4052980; 605821, 4053004; 605890, 4053067; 605951, 4053108; 606007, 4053137; 606408, 4053300; 606490, 4053347; 606545, 4053384; 606598, 4053428; 606636, 4053464; 606689, 4053526; 606767, 4053639; 606817, 4053698; 606874, 4053750; 606918, 4053782; 606950, 4053802; 607005, 4053831; 607729, 4054151; 607873, 4054074; 607886, 4053775; 607904, 4053747; 607933, 4053729; 607986, 4053722; 608063, 4053728; 608098, 4053744; 608110, 4053762; 608102, 4053961; 608113, 4054001; 608182, 4053964; 608546, 4054184; 608601, 4054203; 609141, 4054548; 609160, 4054556; 609231, 4054598; 609258, 4054621; 609310, 4054704; 609315, 4054723; 609316, 4054750; 609309, 4054768; 609291, 4054789; 609315, 4054806; 609366, 4054824; 609440, 4054835; 609459, 4054850; 609477, 4054868; 609493, 4054873; 609569, 4054861; 609611, 4054845; 609698, 4054839; 609757, 4054849; 609772, 4054857; 609817, 4054936; 609820, 4054959; 609841, 4054989; 609907, 4055031; 609927, 4055053; 609944, 4055100; 609947, 4055132; 609927, 4055254; 609934, 4055294; 609967, 4055327; 610020, 4055349; 610057, 4055378; 610164, 4055520; 610209, 4055546; 610237, 4055571; 610306, 4055681; 610387, 4055754; 610520, 4055833; 610554, 4055869; 610574, 4055904; 610643, 4056127; 610658, 4056143; 610901, 4056274; 611153, 4056431; 611104, 4056509; 611091, 4056560; 611069, 4056592; 611046, 4056645; 611025, 4056671; 611033, 4056696; 611031, 4056719; 611006, 4056762; 611005, 4056778; 610992, 4056821; 610993, 4056878; 611001, 4056895; 611011, 4057000; 610986, 4057080; 610970, 4057224; 611012, 4057361; 611950, 4057379; 611958, 4057200; 611948, 4057203; 611937, 4057200; 611926, 4057191; 611923, 4057178; 611938, 4057146; 611938, 4057138; 611942, 4057138; 611962, 4057097; 611970, 4056892; 611990, 4056882; 612022, 4056833; 612154, 4056656; 612173, 4056586; 612270, 4056432; 612342, 4056434; 612478, 4056464; 612526, 4056458; 612566, 4056441; 612640, 4056444; 612759, 4056485; 612970, 4056560; 613013, 4056113; 613193, 4055994; 613060, 4055849; 613038, 4055818; 613033, 4055786; 613060, 4055413; 613060, 4055373; 613052, 4055334; 612998, 4055174; 612988, 4055121; 612992, 4055065; 613011, 4054974; 613013, 4054937; 613005, 4054877; 612986, 4054850; 612887, 4054762; 612866, 4054738; 612847, 4054706; 612833, 4054662; 612818, 4054637; 612799, 4054618; 612755, 4054589; 612743, 4054577; 612721, 4054544; 612693, 4054453; 612476, 4053952; 612446, 4053881; 612426, 4053845; 612349, 4053748; 612332, 4053721; 612319, 4053691; 612303, 4053631; 612267, 4053559; 612265, 4053541; 612273, 4053470; 612274, 4053433; 612270, 4053404; 612250, 4053323; 612251, 4053272; 612255, 4053218; 612238, 4053128; 612226, 4053030; 612228, 4052996; 612255, 4052840; 612255, 4052818; 612248, 4052779; 612235, 4052738; 612193, 4052664; 612188, 4052579; 612167, 4052495; 612147, 4052453; 612110, 4052400; 612097, 4052366; 612092, 4052334; 612092, 4052274; 612096, 4052244; 612113, 4052172; 612125, 4052134; 612203, 4051986; 612236, 4051914; 612248, 4051881; 612275, 4051794; 612283, 4051759; 612291, 4051699; 612281, 4051639; 612261, 4051561; 612247, 4051534; 612118, 4051387; 612023, 4051304; 612002, 4051275; 611994, 4051260; 611987, 4051235; 611979, 4051157; 611957, 4051054; 611948, 4051022; 611934, 4050984; 611908, 4050937; 611867, 4050885; 611722, 4050757; 611702, 4050737; 611694, 4050705; 611676, 4050543; 611484, 4050568; 611399, 4050574; 611259, 4050574; 611146, 4050565; 611042, 4050551; 610945, 4050516; 610871, 4050482; 610784, 4050434; 610732, 4050403; 610678, 4050363; 610617, 4050313; 610545, 4050241; 610074, 4049765; 610039, 4049758; 609981, 4049733; 609937, 4049701; 609889, 4049652; 609877, 4049618; 609814, 4049590; 609730, 4049564; 607897, 4049093; 607832, 4049096; 607676, 4049111; 607570, 4049128; 607487, 4049145; 607378, 4049173; 607306, 4049194; 607130, 4049259; 606738, 4049427; 606676, 4049452; 606613, 4049473; 606531, 4049492; 606449, 4049505; 606382, 4049509; 606308, 4049509; 606215, 4049712; 606173, 4049789; 606127, 4049854; 606067, 4049919; 606019, 4049966; 605756, 4050195; 605696, 4050251; 605658, 4050292; 605623, 4050334; 605590, 4050379; 605560, 4050424; 605532, 4050472; 605496, 4050546; 605465, 4050623; 605448, 4050675; 605428, 4050755; 605417, 4050824; 605412, 4050864; returning to 605408, 4050946.

Excluding: 609791, 4053559; 609792, 4053420; 609833, 4053395; 609908, 4053357; 610068, 4053380; 610032, 4053598; returning to 609791, 4053559.

Excluding: 611172, 4052992; 611242, 4052923; 611314, 4052987; 611402, 4052913; 611442, 4052907; 611524, 4052850; 611543, 4052844; 611587, 4052866; 611607, 4052919; 611628, 4053042; 611618, 4053074; 611670, 4053189; 611761, 4053277; 612029, 4053402; 612049, 4053521; 611863, 4053644; 611727, 4053518; 611656, 4053497; 611611, 4053451; 611535, 4053431; 611438, 4053400; 611394, 4053341; 611346, 4053238; 611278, 4053122; 611230, 4053068; returning to

611172, 4052992. *Excluding:* 611476, 4056579; 611418, 4056559; 611437, 4056500; 611496, 4056520; returning to 611476, 4056579.

(vi) Note: Map of Unit 8 is provided at paragraph (8)(ii) of this entry.

(14) Unit 9: Soledad Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Soledad. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 653941, 4029661; 654080, 4029718; 654098, 4029754; 654158, 4029789; 654279, 4029808; 654372, 4029801; 654425, 4029812; 654458, 4029845; 654505, 4029873; 654619, 4029910; 654705, 4029898; 654777, 4029915; 654821, 4029942; 654865, 4029970; 654930, 4029989; 655223, 4030005; 655305, 4030020; 655374, 4029973; 655318, 4029807; 655195, 4029858; 655025, 4029760; 654944, 4029812; 654829, 4029774; 654735, 4029691; 654629, 4029678; 654495, 4029721; 654381, 4029731; 654318, 4029721; 654199, 4029687; 654123, 4029655; 653987, 4029654; returning to 653941, 4029661.

(ii) Note: Map of Unit 9 (Map 5) follows:

BILLING CODE 4310–55–P

MAP 5 - Unit 9
Critical Habitat for Chorizanthe pungens var. pungens
(Monterey Spineflower)
Monterey County, California
101
146
Soledad
Salinas River
Unit 9
G17
G15
Critical Habitat for
Chorizanthe pungens var. pungens
Roads / Highways
County Boundaries
0 1 2 Miles
Kilometers
0 2 4
N
Area
of
Detail

* * * * *

Dated: December 14, 2007.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 08–6 Filed 1–8–08; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XE80

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Gulf of Alaska Pacific Cod Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2008 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) Pacific cod fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the GOA Pacific cod TAC does not exceed the appropriate amount based on the best available scientific information for Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 4, 2008, until the effective date of the 2008 and 2009 final harvest specifications for GOA groundfish, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 22, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–XE80, by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- FAX to 907–586–7557, Attn: Ellen Sebastian

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2008 Pacific cod TAC in the GOA was set at 54,194 metric tons (mt) by the 2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007).

In December 2007, the Council recommended a 2008 Pacific cod TAC of 50,269 mt for the GOA. This amount is less than the 54,194 mt established by the 2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2007, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the Pacific cod fishery and are listed as endangered under the Endangered Species Act (ESA). Pacific cod is a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specifies how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current GOA Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 Pacific cod TAC to 50,269 mt in the GOA.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 8 of the 2007 and 2008 final harvest specifications for groundfish in the GOA (72 FR 9676, March 5, 2007) is revised for the 2008 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 8—FINAL 2008 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

(values are rounded to the nearest metric ton)

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	19,449	17,504	1,945
A season (60%)		11,669	10,502	1,167
B season (40%)		7,780	7,002	778
	Central	28,426	25,583	2,843
A season (60%)		17,056	15,350	1,706
B season (40%)		11,370	10,233	1,137
	Eastern	2,394	2,155	239

TABLE 8—FINAL 2008 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

(values are rounded to the nearest metric ton)

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Total		50,269	45,242	5,027

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2007, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 22, 2008.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 3, 2008.

Emily H. Menashes

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

[FR Doc. 08–37 Filed 1–4–08; 1:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XE81

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area for Vessels Using Trawl Gear

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

ACTION: Temporary rule.

SUMMARY: NMFS is rescinding the trawl closure in the Chiniak Gully Research Area. This action is necessary to allow vessels using trawl gear to participate in directed fishing for groundfish in the Chiniak Gully Research Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2008, through 1200 hrs, A.l.t., September 20, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20 under regulations at § 679.22(b)(6)(ii)(A). This closure is in support of a research project to evaluate the effects of commercial fishing on pollock distribution and abundance, as part of a comprehensive investigation of Stellar sea lion and commercial fishery interactions.

The regulations at § 679.22(b)(6)(ii)(B) provide that the Regional Administrator, Alaska Region, NMFS, (Regional Administrator) shall rescind the trawl closure if relevant research activities will not be conducted. The Regional Administrator has determined that research activities will not be conducted in 2008 in the Chiniak Gully Research Area. Therefore, the Regional Administrator is rescinding the trawl closure of the Chiniak Gully Research Area. All other closures remain in full force and effect.

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Notice and comment is unnecessary because the rescission of the trawl closure is non-discretionary; pursuant to § 679.22(b)(6)(ii)(B), the Regional Administrator has no choice but to rescind the trawl closure once it is determined that research activities will not be conducted in the area.

Pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to the 30–day delay in effective date requirement of 5 U.S.C. 553(d) since the rule relieves a restriction.

This action has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: January 3, 2008.

Emily H. Menashes,

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

[FR Doc. E8–172 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 6

Wednesday, January 9, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0390; Directorate Identifier 2007–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed 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:

> Several cases of cracks on the main landing gear (MLG) door hinge fitting and MLG door actuator fitting on the keel beam were reported.
>
> Such failure could lead to the loss [of] the MLG door and could cause damage to the aircraft and/or hazard to persons or property on the ground.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 8, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0390; Directorate Identifier 2007–NM–260–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0161, dated June 11, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of cracks on the main landing gear (MLG) door hinge fitting and MLG door actuator fitting on the keel beam were reported.
>
> Such failure could lead to the loss [of] the MLG door and could cause damage to the aircraft and/or hazard to persons or property on the ground.
>
> This Airworthiness Directive (AD) mandates a onetime detailed visual inspection (DVI) and special detailed inspection (SDI) of the MLG door hinge fitting and actuator fitting.

The inspections are for cracking, damage, correct installation, and correct adjustment. The corrective actions include correcting incorrect adjustments and installations, and contacting Airbus for instructions to repair damage and cracking. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A320–53–1195, Revision 02, dated April 5, 2007, and A320–53–1196, Revision 01, dated November 29, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 641 products of U.S. registry. We also estimate that it would take about 28 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,435,840, or $2,240 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Airbus: Docket No. FAA–2007–0390; Directorate Identifier 2007–NM–260–AD.

Comments Due Date

(a) We must receive comments by February 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, all certified models, certificated in any category, all serial numbers up to manufacturer's serial number (MSN) 2850 inclusive, except MSNs 0115, 0184, 0782, 1151, 1190, 2650, 2675, 2706, 2801, and 2837.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Several cases of cracks on the main landing gear (MLG) door hinge fitting and MLG door actuator fitting on the keel beam were reported.

Such failure could lead to the loss [of] the MLG door and could cause damage to the aircraft and/or hazard to persons or property on the ground.

This Airworthiness Directive (AD) mandates a onetime detailed visual inspection (DVI) and special detailed inspection (SDI) of the MLG door hinge fitting and actuator fitting.

The inspections are for cracking, damage, correct installation, and correct adjustment. The corrective actions include correcting incorrect adjustments and installations, and contacting Airbus for instructions to repair damage and cracking.

Actions and Compliance

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

(1) At the latest of the times specified in paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD, perform detailed visual, high frequency eddy current (HFEC), and ultrasonic inspections (for cracking, damage, correct installation, and correct adjustment, as applicable) of the left hand (LH) and right hand (RH) MLG door actuator fitting on the keel beam, and do all applicable corrective actions before further flight. Where the service bulletin specifies the applicable corrective action is contacting Airbus, contact Airbus for repair instructions and repair before further flight. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1195, Revision 02, dated April 5, 2007.

(i) Within 6,000 flight cycles since first flight.

(ii) Within 1,500 flight cycles after the effective date of this AD.

(iii) Within 6,000 flight cycles from the latest MLG door actuator fitting replacement.

(2) At the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, perform detailed visual and HFEC inspections (for cracking, damage, correct installation, and correct adjustment, as applicable) of the LH and RH MLG door hinge fitting on the keel beam, and do all applicable corrective actions before further flight. Where the service bulletin specifies the applicable corrective action is contacting Airbus, contact Airbus for repair instructions and repair before further flight. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1196, Revision 01, dated November 29, 2006.

(i) Within 4,500 flight cycles since first flight.

(ii) Within 1,500 flight cycles after the effective date of this AD.

(3) Actions done before the effective date of this AD in accordance with the applicable service bulletins listed in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD are acceptable for compliance with the corresponding actions required by this AD.

(i) Airbus Service Bulletin A320–53–1195, dated June 23, 2006.

(ii) Airbus Service Bulletin A320–53–1195, Revision 01, dated November 29, 2006.

(iii) Airbus Service Bulletin A320–53–1196, dated June 23, 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, Transport Airplane Directorate, 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2141; 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 European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0161, dated June 11, 2007, Airbus Service Bulletin A320–53–1195, Revision 02, dated April 5, 2007, and Airbus Service Bulletin A–320–53–1196, Revision 01, dated November 29, 2006, for related information.

Issued in Renton, Washington, on December 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–164 Filed 1–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0391; Directorate Identifier 2007–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100 and A319–100 Series Airplanes; A320–111 Airplanes; A320–200 Series Airplanes; and A321–100 and A321–200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes. The existing AD currently requires a one-time inspection of the horizontal hinge pin of the 103VU electrical panel in the avionics compartment to determine if the hinge pin can move out of the hinge, and related investigative and corrective actions if necessary. This proposed AD would require installing a hinge pin stopper on the internal door of the 103VU electrical panel. This proposed AD results from a report indicating that electrical wire damage was found in the 103VU electrical panel due to contact between the hinge pin and the adjacent electrical wire harness. We are proposing this AD to prevent contact between the horizontal hinge pin and the adjacent electrical wire harness, which could result in damage to electrical wires, and consequent arcing and/or failure of associated systems.

DATES: We must receive comments on this proposed AD by February 8, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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 this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0391; Directorate Identifier 2007–NM–271–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 26, 2006, we issued AD 2006–03–10, amendment 39–14474 (71 FR 6665, February 9, 2006), for certain Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes. That AD requires a one-time inspection of the horizontal hinge pin of the 103VU electrical panel in the avionics compartment to determine if the hinge pin can move out of the hinge, and related investigative and corrective actions if necessary. That AD resulted from a report indicating that electrical wire damage was found in the 103VU electrical panel due to contact between the hinge pin and the adjacent electrical wire harness. We issued that AD to prevent contact between the horizontal hinge pin and the adjacent electrical wire harness, which could result in damage to electrical wires, and consequent arcing and/or failure of associated systems.

Actions Since Existing AD Was Issued

Since we issued AD 2006–03–10, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has informed us that the inspections and applicable corrective actions specified in Airbus All Operators Telex 25A1440, dated February 15, 2005 (referred to in AD 2006–03–10 as the appropriate source of service information for the required actions), are not adequate to address the identified unsafe condition (i.e., contact between the horizontal hinge pin and the adjacent electrical wire harness,

which could result in damage to electrical wires, and consequent arcing and/or failure of associated systems).

Relevant Service Information

Airbus has issued Service Bulletin A320–25–1535, dated April 27, 2007. The service bulletin describes procedures for installing a hinge pin stopper on the internal door of the 103VU electrical panel. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2007–0214, dated August 7, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–03–10. This proposed AD would require accomplishing the actions specified in the service bulletin described previously.

Costs of Compliance

This proposed AD would affect about 658 Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes of U.S. registry. The new proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $20 per airplane. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $65,800, or $100 per airplane.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

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

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

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 removing amendment 39–14474 (71 FR 6665, February 9, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–0391; Directorate Identifier 2007–NM–271–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 8, 2008.

Affected ADs

(b) This AD supersedes AD 2006–03–10.

Applicability

(c) This AD applies to Airbus Model A318–111 and –112; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, and –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufactured serial numbers; except for those airplanes on which Airbus Modification 36115 has been done in production or Airbus Service Bulletin A320–25–1535, dated April 27, 2007, has been done in service.

Unsafe Condition

(d) This AD results from a report indicating that electrical wire damage was found in the 103VU electrical panel due to contact between the hinge pin and the adjacent electrical wire harness. We are issuing this AD to prevent contact between the horizontal hinge pin and the adjacent electrical wire harness, which could result in damage to electrical wires, and consequent arcing and/or failure of associated systems.

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.

Installation

(f) Within 18 months after the effective date of this AD, install a hinge pin stopper on the internal door of the 103VU electrical panel in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1535, dated April 27, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, 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

(h) European Aviation Safety Agency airworthiness directive 2007–0214, dated August 7, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on December 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–152 Filed 1–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB00

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: We are proposing to amend our regulation which governs the use of the Automated Clearing House (ACH) system by Federal agencies. That regulation adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2005 ACH Rules book. We are proposing to adopt, with one exception, all of the changes that NACHA has approved since the issuance of the 2005 ACH Rules book, as reflected in the 2007 ACH Rules book.

In addition, the proposed rule would provide two exceptions to the deposit account requirement in the regulation. The regulation requires that an ACH credit entry representing a Federal payment other than a vendor payment be deposited into a deposit account at a financial institution in the name of the recipient. On April 21, 2005, Treasury waived this requirement in order to allow some or all of the amount to be reimbursed to a Federal employee for official travel credit card charges to be disbursed directly to the credit card issuing bank. The proposed rule would codify this waiver. The proposed rule would also provide an exception from the requirements in cases where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Financial Management Service (Service).

DATES: Comments on the proposed rule must be received by March 10, 2008.

ADDRESSES: You can download this proposed rule at the following Web site: *http://www.fms.treas.gov/ach*. You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, the Service publishes rulemaking information on *www.regulations.gov*. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2007–2008, should only be submitted using the following methods:

- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions on the Web site for submitting comments.
- Mail: Bill Brushwood, Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.
- The fax and e-mail methods of submitting comments on rules to the Service have been retired.

Instructions: All submissions received must include the agency name (''Financial Management Service'') and docket number FISCAL–FMS–2007–0008 for this rulemaking. In general, comments will be published on *Regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Bill Brushwood, Financial Program Specialist, at (202) 874–1251 or *bill.brushwood@fms.treas.gov;* or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment related information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

We are proposing to amend part 210 to address changes that NACHA has made to the ACH Rules since the publication of the 2005 ACH Rules. We are publishing this proposed rule in order to indicate which amendments to the ACH Rules we are planning to accept and which amendments we are planning to reject. We are requesting comment on the proposed amendments.

We are also proposing to amend part 210 to codify a waiver allowing for split disbursements of Federal employee travel payments. Currently, section 210.5 requires that an ACH credit entry representing a Federal payment to a payee (other than a vendor payment) be deposited into a deposit account at a financial institution in the name of the recipient. On August 5, 2005, the Office of Management and Budget (OMB) revised Circular No. A–123 (Management's Responsibility for Internal Control). This revision became effective in fiscal year 2006 (October 1, 2005). OMB Circular No. A–123, Appendix B (Improving the Management of Government Charge Card Programs), sec. 4.4 requires, as a general matter, that Federal executive branch agencies implement split disbursement when reimbursing employees for official travel charges. This requirement applies when the individual cardholder is responsible for making payment to the charge card vendor, i.e., the travel card issuing bank. Split disbursement ''is the process of dividing a travel voucher reimbursement between the charge card vendor and traveler.'' OMB Circular No. A–123, Appendix B, sec. 4.4.1. Under split disbursement, the ''balance owed to each is sent directly to the appropriate party.'' Id.

In April 2005, the Department of the Treasury, under the authority of 31 CFR 210.5(b)(3), waived the section 210.5 requirement that an ACH entry be deposited into a deposit account at a financial institution in the name of the recipient for purposes of permitting split disbursement. This was necessary in order to implement OMB's split disbursement policy since an account

maintained by the travel card issuing bank in the name of an employee is not a deposit account at a financial institution within the meaning of section 210.5. We are proposing to amend section 210.5 to codify the terms of the split disbursement waiver into the rule.

The waiver issued by the Department of the Treasury in april 2005 also waived the sister deposit account regulation codified at 31 CFR part 208 (Management of Federal Agency Disbursements). We will issue a separate Notice of Proposed Rulemaking in the **Federal Register** for the purpose of amending Part 208 to codify the terms of the split disbursement waiver into that rule as well.

The government's disbursing officials disburse travel reimbursement payments, including split disbursements, in accordance with the terms of payment certification vouchers submitted by executive branch Federal agencies. *See* 31 U.S.C. 3325 (providing that disbursing officials shall ''disburse money only as provided by a voucher certified'' by a Federal executive agency) and 31 U.S.C. 3528 (setting forth certification voucher requirements). The proposed rule will permit disbursing officials to use the ACH system to disburse split disbursement payments to the travel card issuing bank's account for credit to the employee, as directed by Federal certifying agencies. As such, the primary purpose of the proposed rule is to facilitate the continued implementation of the OMB guidance mandating split disbursement.

From a general cash management perspective, the Service supports split disbursement because it may benefit Federal agencies by reducing the number of travel card delinquencies. Split disbursement may also benefit Federal employee travelers by facilitating payment of their travel card liabilities (although employees remain responsible for having their accounts current).

The proposed rule is not intended to, and would not, establish or amend substantive Federal regulations or policies pertaining to Federal employee travel or reimbursement for official travel expenses. Such regulations and policies are established by, among other authorities, the Federal Travel Regulation (FTR), 41 CFR parts 300–304. The FTR is within the purview of the General Services Administration (GSA). GSA issued GSA Bulletin FTR 05–08 on December 2, 2005, which advised Federal agencies of OMB Circular No. A–123 requirements, including the requirement for split disbursement.

In addition to amending section 210.5 to allow for split disbursement, we are proposing to amend section 210.5 to provide that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated a financial or fiscal agent, and the Service may specify the title, access terms and other provisions governing the account. The requirement that an account to which Federal payments are delivered be a deposit account in the name of the recipient is designed to ensure that a payment reaches the intended recipient. In some cases in which the Service directs its financial or fiscal agent banks to set up a card program to facilitate the delivery of Federal payments, the most effective approach may be to utilize an account in which each card holder's interest is recorded, but each individual's name is not included in the account title. In these programs, the Service can ensure that the beneficial interests of Federal payment recipients are protected because the Service controls the terms and conditions of the programs. The section 210.5 requirements serve little purpose in this context, and add to the complexity of operating these programs. We are therefore proposing to adopt an exception to section 210.5 which would provide the Service with greater flexibility in setting up payment card programs.

II. Summary of Rule Changes

Since we last addressed changes to the ACH Rules in 2005, NACHA has published two sets of changes to the ACH Rules. The first set of changes was published in NACHA's 2006 ACH Rules book and a subsequent set of changes was published in NACHA's 2007 ACH Rules book. We are proposing to adopt all of the changes set forth in the 2006 and 2007 ACH Rules books except those relating to the self-audit provisions of the ACH Rules, which we have previously determined not to incorporate in part 210. The rule changes that we are proposing to adopt consist primarily of modifications to the ACH Rules that have a minimal impact on participants in the ACH Network and that we believe will not significantly affect Federal agencies' use of the ACH Network. However, there are a few rule changes that could have a significant impact on the Federal government's use of the ACH Network.

A. Changes to ACH Rules Published in 2006 ACH Rules Book

The changes published in the 2006 ACH Rules book include a number of minor operational efficiency and return issues changes, and a more significant rules change related to the identification of business checks ineligible for conversion to ACH entries for Accounts Receivable (ARC) entries and Point-of-Purchase (POP) entries. The more significant rule change amended the ACH Rules to enable Receivers [1] to identify business checks that are not to be converted to ARC or POP entries. For ARC entries, the rule change allows a Receiver to notify the Originator [2] directly that the Receiver's checks are not to be converted, or to utilize checks that include an identifier within the Auxiliary On-Us Field within the MICR line. For POP entries, Receivers may opt out either by utilizing checks that include an identifier within the Auxiliary On-Us Field within the MICR line, or by refusing to sign the required written authorization.

Part 210 allows agencies to convert business checks at points-of-purchase and lockboxes by using the Corporate Credit or Debit (CCD) entry format. However, the great majority of checks converted by agencies are consumer checks, and in 2004 we indicated that as we continued to implement check conversion we would not convert business checks at new over-the-counter or lockbox locations. NACHA's rule change provides a way for agencies to clearly identify, in an automated fashion, whether a business check is ineligible for conversion to an ARC or POP entry.[3] We believe the rule change solves a problem that the ACH rules previously presented for agencies: how to identify business checks that are ineligible for conversion that are received in collection streams. Because NACHA's rule change eliminates the need to address the conversion of business checks in part 210, we are proposing to delete those provisions from the regulation. The proposed rule

[1] In an ARC or POP transaction, the Receiver is the person or entity making the payment (i.e., the remitter or payor) by presenting the check that is converted to an ACH debit.

[2] In an ARC or POP transaction, the Originator is the person or entity originating the debit entry to the account of the payor by accepting the payor's check and converting it to an ACH debit.

[3] In 2007, NACHA adopted a rule change to implement a new application for converting checks received at points-of-purchase and manned bill payment locations to ACH debit entries in a back-office environment (see discussion below). As with POP and ARC, Receivers may opt out of back-office conversion by utilizing checks that include an identifier within the Auxiliary On-Us Field within the MICR line.

change does not mean that we intend to begin converting all eligible business checks to ACH entries. Rather, the proposed rule change allows for greater flexibility in determining the most advantageous way for the government to handle business checks. Thus, we may continue to process business checks by using image presentment or presenting the original items, as appropriate, but we will also have the option of converting eligible business checks in situations where it is more efficient and cost-effective to do so.

The minor rule changes published in the 2006 Rules book include:

- Changes related to the Company Name Field definition for ARC entries;
- A requirement for the Originating Depository Financial Institution (ODFI) to enter into a contractual relationship with Third-Party Senders;
- Removal of redundant language regarding use of encryption technology for Internet-initiated (WEB) entries;
- Inclusion of language with respect to an ODFI's liability for breach of specific Telephone-initiated (TEL) warranties;
- Addition of definitions for Automated Accounting Advice (ADV) and Notification or Change (COR) entries;
- Minor modifications of definitions associated with various Return Reason codes; and
- Consolidation of Dishonored Return Reason codes.

We are proposing to adopt all the foregoing rule changes, which we believe improve the operation of the ACH Network and the clarity of the ACH Rules.

B. Changes to ACH Rules Published in 2007 ACH Rules Book

The rule changes published in NACHA's 2007 Rules book involve a number of changes that have a minimal impact on ACH Network participants, as well as three rule amendments with a significant impact either on the private sector or on Federal agencies. Those three amendments are: Changes to NACHA's voting and funding requirements; changes to the requirements for ARC entries and POP entries; and changes to implement a new application for converting checks received at points-of-purchase and manned bill payment locations to ACH debit entries in a back-office environment.

Voting and Funding Requirements

Effective January 1, 2007, NACHA amended the ACH Rules to provide for the assessment of new Network administration fees to cover the costs related to management of the ACH Network. These fees include a per-entry fee for each commercial, inter-bank or Federal Government entry transmitted or received by the participating Depository Financial Institution (DFI). The amount of the transaction fee will be established from time to time by the NACHA Board of Directors based on projected costs and volumes. For calendar year 2007, the per-entry fee is $.0001. In addition to providing for fees, NACHA also modified the procedures for the amendment of the ACH Rules to clarify the specific allocation of votes required for approval of an amendment by the voting membership.

We support this rule change because of its importance in providing for the long term funding of NACHA's Network management activities, including risk management and the advancement of rules supporting the ability of entities to convert check payments received into ACH entries. The Service will pay these fees on behalf of agencies for which we disburse and collect payments.

ARC and POP Entries

NACHA has amended its check conversion rules to keep the rules in sync with Regulation E (12 CFR part 205) and its associated commentary, which the Federal Reserve revised by amendments effective January 1, 2007. NACHA's rule changes ensure that the ACH Rules are consistent with the mandatory changes required by Regulation E by making corresponding changes to the electronic check applications supported by the ACH Rules. Specifically, NACHA's amendment (1) modifies the ACH Rules with respect to the notice requirement for ARC entries, and (2) incorporates a notice obligation into the authorization requirements for POP Entries. This amendment also includes other minor revisions to the ACH Rules to clarify that (1) an ARC source document may not be presented for payment unless the ARC entry is returned by the Receiving Depository Financial Institution (RDFI); (2) ARC entries for which the Receiver opted out of check conversion constitute a valid reason for recredit to the Receiver and return by the RDFI; and (3) a POP entry is considered to be unauthorized if the requirements for both written authorization and notice were not met. In addition, effective March 16, 2007, the requirement that ARC source documents be destroyed within 14 days of the settlement of the entry has been deleted. A new rule has been added to provide that Originators must use commercially reasonable methods to securely store all source documents until destruction, as well as all banking information relating to ARC entries. Finally, NACHA (1) modified the ARC and POP rules governing requirements for MICR capture of source document information, and (2) made corresponding modifications/additions to the audit requirements regarding MICR capture obligations for ARC and POP entries to ensure consistency of wording among various electronic check applications.

The ACH rule changes incorporate Regulation E safe harbor language for the notice required to be provided to Receivers whose checks are converted using ARC entries. Under the newly revised ACH Rules, agencies would be required to use the following language, or language that is substantially similar, for their notices.

> ''When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.''

Until January 1, 2010, the following, or substantially similar, additional language must also be included: ''When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.''

The new ACH Rule changes provide that an Originator may convert a check presented at a point-of-purchase, provided that a required notice is posted in a prominent and conspicuous location, and that a copy of the notice is provided to the Receiver at the time of the transaction. The notice and copy of the notice must include the following or substantially similar language:

> ''When you provide a check as payment, your authorized us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.''

Until January 1, 2010, the following or substantially similar additional language must be included in the notice: ''When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment.''

Agencies are currently required by part 210 to use specifically worded disclosures for POP and ARC check conversion. Those disclosures, which are set out in Appendices A, B, and C to part 210, are substantially similar to (but much longer than) the foregoing POP and ARC required notices. We are

proposing to delete Appendices A, B, and C from part 210, which would mean that agencies could either continue to use the same disclosures they are currently using or, alternatively, begin using the shorter disclosures now required under the ACH Rules.

Back Office Conversion Entries

Effective March 16, 2007, NACHA established a new electronic check conversion application, Back Office Conversion (BOC) entries, that will allow retailers and billers to accept checks at the point-of-purchase or at manned bill payment locations and convert the checks to ACH debits during back office processing. In order to use a check to originate a BOC entry, the Originator must post a notice in a prominent and conspicuous location that states: ''When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please call [retailer phone number].'' Until January 1, 2010, the posted notice must also state: ''When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment, and you will not receive your check back from your financial institution.'' A copy of the notice, or language that is substantially similar, must be provided to the Receiver at the time of the transaction. In addition, the Originator must provide the Receiver the ability to opt out of the conversion of his check to an ACH debit entry. To opt out, the Receiver must notify the Originator at the time of purchase that a particular check does not authorize an ACH debit entry.

We are proposing to adopt most of the ACH rule changes implementing the BOC application. In 2003, we amended part 210 to allow agencies to convert checks to ARC entries in certain circumstances that fall outside typical accounts receivable and point-of-purchase settings. Our rule enabled Federal agencies to convert checks in circumstances in which check conversion would not have been possible under NACHA's then-existing ARC and POP rules. For example, when Army pay officers travel to remote, off-base locations in order to cash checks for soldiers, pay officers cannot bring along the necessary equipment to scan and return voided checks, as is required by the ACH rules governing POP entries. Nor could these checks be converted to ARC entries under ACH rules, because a pay officer's acceptance of checks in these circumstances does not constitute an accounts receivable (lockbox) setting. To provide for the conversion of checks in a variety of circumstances falling outside typical accounts receivable and point-of-purchase settings, we adopted in part 210 a provision to allow agencies to convert checks delivered in person in circumstances in which an agency cannot contemporaneously image and return the check.

Because the BOC application addresses the Government's need for flexibility in these situations, there is no longer a need to retain this provision in Part 210. Instead, agencies can now convert these checks using the BOC application. We therefore propose to adopt the rule changes implementing the BOC application, with the exception of the audit requirements associated with the BOC entry type as reflected within Appendix Eight (Rule Compliance Audit Requirements), Sections 8.2 and 8.3 of the ACH Rules. We are proposing not to adopt the audit requirements, consistent with our previous position exempting Federal agencies from the requirements of ACH Rules associated with enforcement of the ACH Rules (Appendix Eight and Appendix Eleven).

Treasury needs to make the programming and operational changes necessary to implement the BOC application. Accordingly, we expect that for some period of time after the adoption of a final rule, it will be necessary to continue our existing process of converting items to ARC entries in circumstances other than typical lockbox and point-of-purchase settings.

Rules With a Minor Impact on the ACH Network

NACHA published in the 2007 Rules book the following amendments that have a minor impact on the ACH Network:

• *Description of Corrected Data Within Contested Dishonored Return Reason Code R74*—Previously, the description of Return Reason Code R74 (Corrected Return), related to the correction of the Individual Identification Number/Identification Number Field within the Entry Detail Record, did not reflect all applicable SEC Codes that contain these fields. This amendment modified the description of Return Reason Code R74 within Appendix Five, Section 5.4 (Table of Return Reason Codes), as it relates to the Individual Identification Number/Identification Number, to add the following additional SEC Codes to be consistent with current industry practice; CBR, CTX, DNE, ENR, PBR, TEL, TRX, and WEB.

• *Direct Financial Institution and Payment Association Definitions*—The Terms ''Direct Financial Institution'' and ''Payment Association'' were referenced within the procedures for amendment of the ACH Rules in Article Thirteen but not defined within the ACH Rules. This amendment added definitions for these terms to Article Fourteen (Definition of Terms) of the ACH Rules.

• *Time Frame to Re-initiate Entries*—Previously, the ACH Rules defined under what conditions an ACH entry that is returned may be re-initiated, but did not prescribe any limitations on the time period within which such re-initiation must occur. To preclude attempts to re-initiate extremely stale entries, NACHA amended the rules to establish the period of time after which returned entries cannot be re-initiated. Specifically, an entry may not be re-initiated more than 180 days after the settlement date of the original transaction.

• *Available ACH Characters*—This amendment modified the definition of ''alphameric'' within Article Fourteen and the data specification requirements within Appendix One to clarify that lowercase alpha characters are permitted within ACH entries, except where explicitly noted otherwise.

• *Name and Definition of Cash Concentration or Disbursement (CCD) Standard Entry Class Code*—This amendment modified the name and description of the CCD format to clarify that CCD entries can be used more broadly than just for intra-corporate payments. The name of the CCD format was changed from ''Cash Concentration or Disbursement'' to ''Corporate Credit or Debit'' and the description was revised to indicate that this code may also be used for a transfer of funds from the account of one organization to the account of another organization.

• *Formatting Requirements for TEL (Telephone-Initiated) and WEB (Internet-Initiated) Entries*—This amendment redefined the Individual Name Field within the Entry Detail Record of both TEL and WEB entries (and related returns) from Required to Mandatory to facilitate ACH Operators' use of various risk filters to monitor the field for possible fraudulent content. Operator edits within Appendix Three, as they relate to Return Reason Code R26 (Mandatory Field Error), were also modified to permit the return of any TEL or WEB entry within which this field contains all spaces or all zeros.

• *Additional Addenda Code for Dishonored Return Reason Code R69*—

This amendment added, under the description of Return Reason Code R69 (Field Errors), an additional criterion under which an entry containing incorrect information may be dishonored. This change enables an ODFI to dishonor a return if the original Effective Entry Date was incorrectly copied from the forward entry.

We support the foregoing ACH Rules changes. The changes clarify certain ACH Rules that were previously unclear or ambiguous, and provide greater flexibility and operational efficiency for users of the ACH Network. We believe these changes are beneficial and propose to incorporate them into part 210.

III. Section-by-Section Analysis

In order to incorporate in part 210 the ACH rule changes that we are accepting, the only change necessary to the current regulation is to replace references to the 2005 Rules book with references to the 2007 ACH Rules book. No change to part 210 is necessary in order to exclude the amendments to the audit provisions, since part 210 already provides that the ACH audit requirements do not apply to Federal agency ACH transactions.

Section 210.2(d)

We are proposing to amend the definition of applicable ACH Rules at § 210.2(d) to reference the rules published in NACHA's 2007 Rules book rather than the rules published in NACHA's 2005 Rules book.

Section 210.3(b)

We are proposing to amend § 210.3(b) by replacing the references to the ACH Rules as published in the 2005 Rules book with references to the ACH Rules as published in the 2007 Rules book.

Section 210.5

We are proposing to amend § 210.5(b) by adding a new paragraph (b)(3) to allow for the issuance of part or all of a Federal employee's travel reimbursement to the employee's travel card account at the card issuing bank. We are also proposing to add a new paragraph (b)(4), which would provide that where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated as a financial or fiscal agent. The Service may specify the account title, access terms, and other account provisions, and thereby protect the interest of payment recipients. This paragraph would apply in those cases when the Service directs its financial or fiscal agent bank to set up a card program.

Section 210.6(g)

We are proposing to revise current § 210.6(g) to reflect the revision of the ACH Rules governing POP entries. We believe that, as revised, the ACH Rules governing POP entries are appropriate in most respects for agencies. Unlike the ACH Rules, however, part 210 will continue to allow agencies to originate POP entries without a written authorization, as long as the notice required by the ACH Rules is posted and the Receiver is provided with a copy of the notice. This approach is consistent with the authorization requirements of Regulation E.

Section 210.6(h)

We are proposing to delete the text of current § 210.6(h). We believe that, as revised, the ACH Rules governing accounts receivable check conversion are appropriate for agencies, and therefore, a separate rule within part 210 is no longer necessary. We are proposing to revise the text of current § 210.6(i) and renumber it as § 210.6(h). The revision would clarify that in order to debit a Receiver's account for an insufficient funds service fee, the agency must have independent authority to collect fees for items returned due to insufficient funds. An agency that has such authority may originate an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds, provided that the agency discloses the service fee in the notices required for the ARC, POP or BOC entry. The required disclosure is unchanged, but has been relocated from Appendices A, B, and C, which we are proposing to remove from the regulation.

IV. Procedural Requirements

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes to the regulation related to ARC, POP, and BOC check conversion will not result in significant costs for individuals or financial institutions affected by the changes, including financial institutions that are small entities. New ACH fees will be borne by the government, and will not affect other parties sending or receiving Federal ACH transactions, including small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Words of Issuance

For the reasons set out in the preamble, we propose to amend 31 CFR part 210 as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 21, 2007, as published in Parts II, III and VI of the ''2007 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'' except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rules 1.2.4 and 2.2.1.12; Appendix Eight; and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.10; 2.6; and 4.8 (governing the reclamation of benefit payments);

(5) ACH Rule 9.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition ''Effective Entry Date'' in Appendix Two);

(6) ACH Rule 2.11.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and

(7) ACH Rule 2.13.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

* * * * *

3. Revise § 210.3(b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 21, 2007, as published in parts II, III, and VI of the ''2007 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''2007 ACH Rules'' are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capital Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA—The Electronic Payments Association after January 1, 2007 shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

* * * * *

4. Redesignate paragraph § 210.5(b)(3) as § 210.5(b)(5) and add new paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.5 Account requirements for Federal payments.

* * * * *

(b) * * *

(3) Where an agency is issuing part or all of an employee's travel reimbursement payment to the official travel card issuing bank, as authorized or required by Office of Management and Budget guidance or the Federal Travel Regulation, the ACH credit entry representing the payment may be deposited to the account of the travel card issuing bank for credit to the employee's travel card account at the bank.

(4) Where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated by the Service as a financial or fiscal agent. The account title, access terms and other account provisions may be specified by the Service.

6. In § 210.6, revise paragraphs (g) and (h) to read as follows, and remove paragraph (i):

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase unless the Receiver opts out in accordance with the ACH Rules. The requirements of ACH Rules 2.1.2 and 3.12 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Returned item service fee.* An agency that has authority to collect returned item service fees may do so by originating an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.5 if the agency includes the following statement in the required notice(s) to the Receiver: ''If the electronic fund transfer cannot be completed because there are insufficient funds in your account, we may impose a one-time fee of $[_____] against your account, which we will also collect by electronic fund transfer.''

Appendices A, B and C [Removed]

7. Remove Appendices A, B and C from this part.

Dated: December 27, 2007.

Kenneth R. Papaj,

Commissioner.

[FR Doc. 08–22 Filed 1–8–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2007–0043]

RIN 1625–AA09

Drawbridge Operation Regulations; Arkansas Waterway, Little Rock, AR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes an amendment to the regulation for the operation of the Baring Cross Railroad Drawbridge across the Arkansas Waterway at Mile 119.6 at Little Rock, Arkansas. The revised regulation would accurately depict where the drawbridge operator is located and that the bridge, which is remotely operated, is equipped with a Photoelectric Boat Detection System.

DATES: Comments and related material must reach the Coast Guard on or before March 10, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0043 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0043), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2007–0043) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

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

Background and Purpose

The Arkansas Waterway is a part of the McClellan-Kerr Arkansas River Navigation System. The System rises in the vicinity of Catoosa, Oklahoma, and embraces improved natural waterways and a canal to empty into the Mississippi River in southeast Arkansas. The Arkansas Waterway drawbridge operation regulation contained in 33 CFR 117.123(b)(1) states that any vessel requiring an opening of the draw of the Baring Cross Railroad Drawbridge, Mile 119.6, shall contact the remote drawbridge operator in North Little Rock, Arkansas. The Coast Guard has determined that the remote operation is, in fact, conducted from Union Pacific's Harriman Dispatch Center in Omaha, Nebraska and a regulation change is needed to accurately reflect the location. In addition, as indicated in the Coast Guard bridge permit, the bridge is required to have audio and visual aids to permit remote operation. A sentence stating that the bridge is equipped with a Photoelectric Boat Detection System will be added to 33 CFR 117.123(b)(1) to clarify this issue.

Discussion of Proposed Rule

The proposed changes to 33 CFR 117.123(b)(1) will correct inaccuracies and will more properly reflect how the Baring Cross Railroad Drawbridge, Mile 119.6, on the Arkansas Waterway is operated as follows: (a) Indicate Omaha, Nebraska, as the actual location of the remote drawbridge operator; and (b) Indicate that the bridge is equipped with a Photoelectric Boat Detection System, a requirement of the Coast Guard bridge permit.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule on commercial traffic operating on the Arkansas Waterway to be so minimal that a full Regulatory Evaluation is unnecessary. The operating procedures are already in place at the Baring Cross Railroad Drawbridge, Mile 119.6, and the proposed changes to the CFR documents the procedures.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is neutral to all business entities since it only clarifies how the bridge is operated and the bridge is still required to open on demand for vessels.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 269–2378. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Proposed Regulatory Text

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.123(b)(1) to read as follows:

§ 117.123 Arkansas Waterway

* * * * *

(b) * * *

(1) *Normal flow procedures.* Any vessel which requires an opening of the draw of this bridge shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 13 in Omaha, Nebraska. The remote drawbridge operator will advise the vessel whether the requested span can be immediately opened and maintain constant contact with the vessel until the requested span has opened and the vessel passage has been completed. The bridge is equipped with a Photoelectric Boat Detection System to prevent the span from lowering if there is an obstruction under the span. If the drawbridge cannot be opened immediately, the remote drawbridge operator will notify the calling vessel and provide an estimated time for a drawbridge opening.

* * * * *

Dated: December 19, 2007.

J.R. Whitehead,

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

[FR Doc. E8–160 Filed 1–8–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2001–0017; FRL–8502–4]

RIN 2060–AO59

Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$—Correcting and Simplifying Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA recently finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$) are met. These changes were made in support of revisions to the NAAQS for particulate matter (PM) that were finalized in the same rulemaking. Following the publication of this rule, an omission was discovered in the rule text explaining the procedures for calculating the key statistic (98th percentile) involved with determining compliance with the 24-hour $PM_{2.5}$ standard in locations where extra samples of $PM_{2.5}$ in ambient air were taken above the intended sampling frequency. If the error in the regulatory text is left unchanged, the resulting statistic for calculating compliance with the 24-hour $PM_{2.5}$ standard would be biased low at some samplers, leading to potentially incorrect determinations that an area was attaining the NAAQS. The EPA is proposing to correct this error. The proposed correction involves the replacement of the currently used statistical formula and instructions with a simpler look-up table approach which is easier for readers to understand and which retains the originally intended numerical consistency with EPA's historical practice.

DATES: Written comments must be received by February 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2001–0017, by mail to: Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Mr. Lewis Weinstock, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3661; fax number: (919) 541–1903; e-mail address: *weinstock.lewis@epa.gov*. For technical questions, please contact Mr. Mark Schmidt, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (C304–04), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–1903; e-mail address: *schmidt.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take corrective action on 40 CFR part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$. We have published a direct final rule identical to this proposal in the ''Rules and Regulations'' section of this **Federal Register**. This direct final rule will correct and simplify parts of a recent final rule published on October 17, 2006 that finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$), are met. We view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives relevant adverse comment on the amendments included in this proposal, we will publish a timely withdrawal in the **Federal Register**. We will address these public comments in a subsequent final rule based on this proposal. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Federal government	924110	Federal agencies that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data.
State/territorial/local/tribal government	924110	State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. There is no information collection requirement directly associated with revisions to a NAAQS or supporting appendices under section 109 of the CAA.

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.

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.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. The proposed correcting and simplifying change does not create additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006. The proposed rule change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$). Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly of uniquely affect small governments. The proposed rule change only corrects and simplifies one error in Appendix N of part 50.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$); thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$). Thus, Executive Order 13175 does not apply to this proposed rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because, while it is based on the need for monitoring data to characterize risk, this proposed rule itself does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act

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

This proposed rulemaking does not involve any new technical standards for environmental monitoring and measurement. Ambient air concentrations of $PM_{2.5}$ are currently measured by the Federal reference method in 40 CFR part 50, Appendix L (Reference Method for the Determination of Fine Particulate as $PM_{2.5}$ in the Atmosphere) or by Federal Reference Method or Federal Equivalent Method that meet the requirements in 40 CFR part 53.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary standards and to explain why such standards should be used in this regulation.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule merely amends the October 17, 2006, final PM NAAQS rule (71 FR 61144) by correcting and simplifying existing $PM_{2.5}$ data handling conventions and computations.

List of Subjects in 40 CFR Part 50

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 29, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. 07–5953 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1043; FRL–8514–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve revisions to Michigan's State Implementation plan (SIP) to add the prevention of significant deterioration (PSD) construction permit program under the Federal Clean Air Act (CAA). This program affects major stationary sources in Michigan that are subject to or potentially subject to the PSD construction permit program.

DATES: Comments must be received on or before February 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–

OAR–2007–1043, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: blakley.pamela@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–1043. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Laura Cossa, Environmental Engineer, at (312) 886–0661 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Laura Cossa, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0661, *cossa.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Is Being Addressed in This Document?
III. What Are the Changes That EPA Is Conditionally Approving?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

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

II. What Is Being Addressed in This Document?

EPA is proposing to conditionally approve revisions to Michigan's SIP to add the PSD construction permit program. Approval of the proposed state rules would allow Michigan to obtain a full CAA New Source Review (NSR) SIP. Current state SIP rules implement the major NSR permitting program for sources located in counties not attaining air quality standards, but not the PSD permitting program for sources located in counties attaining air quality standards. Prior to Michigan's development of the submitted PSD program, EPA delegated to Michigan the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21 (via delegation letter dated September 26, 1988).

The new state PSD rules reflect the requirements of CAA 42 Sections 110(a)(2)(c) and 165. The state PSD rules also reflect recent changes to 40 CFR 51.166, following the June 24, 2005, United States Court of Appeals for the District of Columbia Circuit ruling on the Federal PSD and non-attainment NSR regulation revisions. These revisions are commonly referred to as ''NSR Reform'' regulations, and became effective on March 3, 2003. Michigan adopted the PSD rules on December 4, 2006. The rules took effect immediately at the state level. The Michigan Department of Environmental Quality (MDEQ) submitted to EPA a final request for approval of these rules into the SIP on December 21, 2006. On February 12, 2007, EPA notified the state that the submittal satisfied the completeness criteria set forth at 40 CFR 51, Appendix V.

III. What Are the Changes That EPA Is Conditionally Approving?

Michigan Air Pollution Control Rules, Part 18, Prevention of Significant Deterioration of Air Quality, Rules R 336.2801 to R 336.2819 and R 336.2823 (1) to (14).

The following subsections discuss the elements of the proposed state rules and how they compare to Federal requirements:

R 336.2801 Definitions

Actual Emissions

Michigan has established the definition of ''actual emissions'' in R

336.2801(a). This definition is consistent with the definition in 40 CFR 51.166(b)(21).

Baseline Actual Emissions

Michigan has established the definition of ''baseline actual emissions'' in R 336.2801 (b). This definition is consistent with the definition in 40 CFR 51.166(b)(47).

Baseline Area

Michigan has established the definition of ''baseline area'' in R 336.2801(c). The definition is consistent with the definition in 40 CFR 51.166(b)(15). The reference to nonattainment area regulations in state rule R 336.2801(c)(ii)(b) is irrelevant for the purposes of this PSD SIP submittal.

Baseline Concentration

Michigan has established the definition of ''baseline concentration'' in R 336.2801(d). This definition is consistent with the definition in 40 CFR 51.166(b)(13).

Begin Actual Construction

Michigan has established the definition of ''begin actual construction'' in R 336.2801 (e). This definition is consistent with the definition in 40 CFR 51.166(b)(11).

Best Available Control Technology or ''BACT''

Michigan has established the definition of ''BACT'' in R 336.2801(f). This definition is consistent with the definition in 40 CFR 51.166(b)(12).

Building, Structure, Facility, or Installation

Michigan has established the definition of ''building, structure, facility, or installation''—in R 336.2801 (g). This definition is consistent with the definition in 40 CFR 51.166(b)(6).

Clean Coal Technology

Michigan has established the definition of ''clean coal technology'' in R 336.2801 (h). This definition is consistent with the definition in 40 CFR 51.166(b)(33).

Clean Coal Technology Demonstration Project

Michigan has established the definition of ''clean coal technology demonstration project'' in R 336.2801(i). This definition is consistent with the definition in 40 CFR 51.166(b)(34).

Commence

Michigan has established the definition of ''commence'' in R 336.2801(k). This definition is consistent with the definition in 40 CFR 51.166(b)(9).

Complete

Michigan has established the definition of ''complete''—in reference to an application to a permit—in R 336.2801(l). This definition is consistent with the definition in 40 CFR 51.166(b)(22).

Construction

Michigan has established the definition of ''construction'' in R 336.2801(m). This definition is consistent with the definition in 40 CFR 51.166(b)(8).

Continuous Emissions Monitoring System or ''CEMS''

Michigan has established the definition of ''CEMS'' in R 336.2801(n). This definition is consistent with the definition in 40 CFR 51.166(b)(43).

Continuous Emissions Rate Monitoring System or ''CERMS''

Michigan has established the definition of ''CERMS'' in R 336.2801(o). This definition is consistent with the definition in 40 CFR 51.166(b)(46).

Continuous Parameter Monitoring System or ''CPMS''

Michigan has established the definition of ''CPMS'' in R 336.2801(p). This definition is consistent with the definition in 40 CFR 51.166(b)(45).

Electric Utility Steam Generating Unit

Michigan has established the definition of ''electric utility steam generating unit'' in R 336.2801(q). This definition is consistent with the definition in 40 CFR 51.166(b)(30).

Emissions Unit

Michigan has established the definition of ''emissions unit'' in R 336.2801(r). This is consistent with the definition in 40 CFR 51.166(b)(7). Included in both the Federal and state definitions is the statement that a replacement unit is considered an existing unit under this definition. However, Michigan's rules do not define ''replacement unit,'' which is included in the Federal rule at 40 CFR 51.166(b)(7). In a letter sent to EPA on May 17, 2007, Michigan agreed to follow the Federal definition of ''replacement unit'' in its implementation of these rules, and committed to add the definition in a future rulemaking. In a subsequent letter to EPA, dated November 30, 2007, MDEQ committed to add this definition in the rules not later than one year after EPA's conditional approval of this plan. Based on this commitment, and the understanding that Michigan will follow the Federal definition of ''replacement unit'' in its implementation of the rules in the interim, EPA is proposing to conditionally approve this rule.

Federal Land Manager

Michigan has established the definition of ''federal land manager'' in R 336.2801(s). This definition is consistent with the definition in 40 CFR 51.166(b)(24).

High Terrain

Michigan has established the definition of ''high terrain'' in R 336.2801(t). This definition is consistent with the definition in 40 CFR 51.166(b)(25).

Hydrocarbon Combustion Flare

Michigan has established the definition of ''hydrocarbon combustion flare'' in R 336.2801(u). This definition is consistent with the definition in 40 CFR 51.166(b)(31)(iv).

Indian Reservation

Michigan has established the definition of ''Indian reservation'' in R 336.2801(v). This definition is consistent with the definition in 40 CFR 51.166(b)(27).

Indian Governing Body

Michigan has established the definition of ''Indian governing body'' in R 336.2801(w). This definition is consistent with the definition in 40 CFR 51.166(b)(28).

Innovative Control Technology

Michigan has established the definition of ''innovative control technology'' in R 336.2801(x). This definition is consistent with the definition in 40 CFR 51.166(b)(19).

Low Terrain

Michigan has established the definition of ''low terrain'' in R 336.2801(y). This definition is consistent with the definition in 40 CFR 51.166(b)(26).

''*Lowest Achievable Emission Rate'' or ''LAER''*

Michigan has established the definition of ''LAER'' in R 336.2801(z). This definition is consistent with the definition in 40 CFR 51.166(b)(52).

Major Modification

Michigan has established the definition of ''major modification'' in R 336.2801(aa). This definition is consistent with the definition in 40 CFR 51.166(b)(2).

Major and Minor Source Baseline Date

Michigan has established the definition of ''major source baseline date'' and ''minor source baseline date'' in R 336.2801(bb). This definition is consistent with the definition in 40 CFR 51.166(b)(14).

Major Stationary Source

Michigan has established the definition of ''major stationary source'' in R 336.2801(cc). This definition is consistent with the definition in 40 CFR 51.166(b)(1).

Necessary Preconstruction Approvals or Permits

Michigan has established the definition of ''necessary preconstruction approvals or permits'' in R 336.2801(dd). This definition is consistent with the definition in 40 CFR 51.166(b)(10).

Net Emissions Increase

Michigan has established the definition of ''net emissions increase'' in

R 336.2801(ee). This definition exceeds the requirements of 40 CFR 51.166(b)(3). As described in 40 CFR 51.166(b), states can use definitions that are more stringent than the corresponding definitions listed in 40 CFR 51.166(b)(1) to (56). However, in a letter dated May 17, 2007, Michigan declined intent for a more stringent definition, and stated that the definition of ''net emissions increase'' is being rewritten under a state rulemaking, so that it will follow the same requirements as the Federal rule. Michigan indicates that the definition of ''net emissions increase'' as currently set forth in R 336.2801(ee) will be applied until the state rules are revised. EPA finds that the rule is approvable as currently promulgated, and as proposed to be revised to match the Federal definition. Therefore we propose to approve the definition of ''net emissions increase'' as part of the SIP.

Pollution Prevention

Michigan has established the definition of ''pollution prevention'' in R 336.2801(gg). This definition is consistent with the definition in 40 CFR 51.166(b)(38).

Potential to Emit or ''PTE''

''Michigan has established the definition of ''PTE'' in R 336.2801(hh). This definition is consistent with the definition in 40 CFR 51.166(b)(4), except instead of ''federally enforceable,'' vacated in *Chemical Manufacturers Assn* v. *EPA,* No. 89–1514 (D.C. Cir. Sept. 15, 1995) the Michigan rules use the more general term ''legally enforceable.'' See EPA Interim Policy on Federally Enforceable Requirement for Limitations on PTE, dated January 22, 1996 (''Interim Policy''). EPA proposes to find the use of the term ''legally enforceable'' approvable as part of the definition of ''PTE'' because Michigan agrees to apply the term ''legally enforceable'' in accordance with the Interim Policy to mean legally and practically enforceable by a state or local air pollution control agency, as well as by the EPA. In general, practicable enforceability for a source-specific permit means that the permit's provisions must specify: (1) A technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance including appropriate monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule.

Michigan has committed in a letter dated September 11, 2007, to apply the term ''legally enforceable'' consistent with the above, and to revise the rule to make it consistent with this understanding. In a subsequent letter to EPA, dated November 30, 2007, MDEQ committed to add this definition in the rules not later than one year after EPA's conditional approval of this plan. Therefore EPA is proposing to conditionally approve this rule.

Predictive Emissions Monitoring System or ''PEMS''

Michigan has established the definition of ''PEMS'' in R 336.2801(ii). This definition is consistent with the definition in 40 CFR 51.166(b)(44).

Prevention of Significant Deterioration Program or ''PSD''

Michigan has established the definition of ''PSD'' in R 336.2801(jj). This definition is consistent with the definition in 40 CFR 51.166(b)(42).

Project

Michigan has established the definition of ''project'' in R 336.2801(kk). This definition is consistent with the definition in 40 CFR 51.166(b)(51).

Projected Actual Emissions

Michigan has established the definition of ''projected actual emissions'' in R 336.2801(ll). This definition is consistent with the definition in 40 CFR 51.166(b)(40).

Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit

Michigan has established the definition of ''reactivation of a very clean coal-fired electric utility steam generating unit'' in R 336.2801 (mm). This definition is consistent with the definition in 40 CFR 51.166(b)(37).

Regulated New Source Review Pollutant

Michigan has established the definition of ''regulated new source review pollutant'' in R 336.2801(nn). This definition is consistent with the definition in 40 CFR 51.166(b)(49).

Repowering

Michigan has established the definition of ''repowering'' in R 336.2801(oo). This definition is consistent with the definition in 40 CFR 51.166(b)(36).

Secondary Emissions

Michigan has established the definition of ''secondary emissions'' in R 336.2801(pp). This definition is consistent with the definition in 40 CFR 51.166(b)(18).

Significant

Michigan has established the definition of ''significant'' in R 336.2801(qq). This definition is consistent with the definition in 40 CFR 51.166(b)(23).

Significant Emissions Increase

Michigan has established the definition of ''significant emissions increase'' in R 336.2801(rr). This definition is consistent with the definition in 40 CFR 51.166(b)(39).

Stationary source

Michigan has established the definition of ''stationary source'' in R 336.2801(ss). This definition is consistent with the definition in 40 CFR 51.166(b)(5).

Temporary Clean Coal Technology Demonstration Project

Michigan has established the definition of ''temporary clean coal technology demonstration project'' in R 336.2801(tt). This definition is consistent with the definition in 40 CFR 51.166(b)(35).

Definitions Not Included in the PSD SIP

The following 40 CFR 51.166(b) definitions are not included in the submitted SIP rules: ''allowable emissions'', ''federally enforceable'', and ''fugitive emissions''. The definitions of ''allowable emissions'' and ''fugitive emissions'' are included in previously approved SIP programs in Michigan's air rules (R 336.1101(j) and R 336.1106(h)), and are consistent with the definitions in 40 CFR 51.166(b)(16) and 40 CFR 51.166(b)(20). EPA is proposing to approve the rules based on Michigan's commitment that, in its implementation of the PSD rules, the State will follow the definitions of ''allowable emissions'' and ''fugitive emissions'' as included in previously approved SIP programs in Michigan's air rules (R 336.1101(j) and R 336.1106(h)), and as consistent with the definitions in 40 CFR 51.166(b)(16) and 40 CFR 51.166(b)(20).

The definition of ''federally enforceable'' is not required for the PSD SIP. See discussion above in conjunction with the definition of ''PTE.'' Instead of ''federally enforceable,'' the Michigan rules use the term ''legally enforceable.'' Consistent with the Interim Policy, EPA proposes to find the term ''legally enforceable'' conditionally approvable as part of the rules' definition of ''PTE'' (R 336.2801(hh)) as long as Michigan agrees to apply the term ''legally enforceable'' in accordance with the Interim Policy to mean legally and practically enforceable by the EPA, a state or local air pollution control agency,'' as discussed above.

R 336.2802 Applicability

The Michigan rule defines the applicability of the PSD permitting program. The rule states that new major sources or major modifications at existing major sources of air pollution must obtain a PSD permit before construction begins. The rule also states that major modifications occur when a project causes a significant increase in an air pollutant. The rule then goes on to provide four methods of determining whether a significant increase occurs: (1) Baseline actual emissions v. future potential emissions (applies to new or existing sources); (2) baseline actual emissions v. projected actual emissions (applies to existing sources only); (3) hybrid combination (for projects involving new and existing sources); and (4) Plantwide Applicability Limitations. Rule R 336.2802 is consistent with 40 CFR 51.166(a)(7).

R 336.2803 Ambient Air Increments

This rule contains the ambient air increment requirements (acceptable maximum impacts that may be caused by a new source of air pollution). Rule R 336.2803 is consistent with 40 CFR 51.166(c).

R 336.2804 Ambient Air Ceilings

This rule sets forth ambient air increment requirements to ensure that no source may cause the concentration of air pollutants in the ambient air to exceed the National Ambient Air Quality Standards (NAAQS). Rule R 336.2804 is consistent with 40 CFR 51.166(d).

R 336.2805 Restrictions on Area Classifications

This rule contains the ambient air ceiling requirements for certain Class I areas (such as national parks and national wildlife areas). All other areas of the state are Class II areas. The Federal and state PSD rules allow greater impacts from air pollutants in Class III areas, but Michigan does not currently contain any Class III areas. If Michigan were to seek to establish any Class III areas, then this rule would need to be consistent with Class III requirements at that time. Rule R 336.2805 is consistent with 40 CFR 51.166(e).

R 336.2806 Exclusions From Increment Consumption

This rule specifies concentrations which shall be excluded from determining compliance with maximum allowable increments. Rule R 336.2806 is consistent with 40 CFR 51.166(f).

R 336.2807 Redesignation

This rule contains provisions for obtaining waivers from normal increment consumption requirements. Rule R 336.2807 is consistent with 40 CFR 51.166(g).

R 336.2808 Stack Heights

This rule contains stack heights requirements. Rule R 336.2808 is consistent with 40 CFR 51.166(h).

R 336.2809 Exemptions

This rule exempts certain sources from applicable technology review, air quality monitoring, and projected emission impact modeling requirements. Rule R 336.2809 is consistent with 40 CFR 51.166(i).

R 336.2810 Control Technology Review

This rule requires permit applicants to include the BACT on proposed new major sources or major modifications at existing major sources. Rule R 336.2810 is consistent with 40 CFR 51.166(j).

R 336.2811 Source Impact Analysis

This rule requires permit applicants to demonstrate that their proposed emissions will not cause a violation of the NAAQS or the air quality increment. Rule R 336.2811 is consistent with 40 CFR 51.166(k).

R 336.2812 Air Quality Models

This rule provides requirements for acceptable computer models which may be used in an air quality impact demonstration. Rule R 336.2812 is consistent with 40 CFR 51.166(l).

R 336.2813 Air Quality Analysis

This rule requires that a PSD permit applicant analyze the existing condition of the ambient air at the proposed site both before and after construction (sometimes referred to as preconstruction and post-construction monitoring). Rule R 336.2813 is consistent with 40 CFR 51.166(m).

R 336.2814 Source Information

This rule contains minimum information content requirements for PSD permit applications. Rule R 336.2814 is consistent with 40 CFR 51.166(n).

R 336.2815 Additional Impact Analyses

This rule requires that the PSD permit applicant evaluate additional environmental impacts, like the impairment of visibility, soils, or vegetation. Rule R 336.2815 is consistent with 40 CFR 51.166(o).

R 336.2816 Sources Impacting Federal Class I Areas; Additional Requirements

This rule establishes alternative increment requirements for sources impacting Class I areas. Rule R 336.2816, as submitted, is not consistent with 40 CFR 51.166(p). Specifically, state rule R 332.2816(2)(a) does not include the requirements of 51.166(p)(3), under which a plan must provide a mechanism whereby the Federal Land Manager may present to the state a demonstration of impacts of air quality-related values from proposed source/modification where maximum allowable increases for a Class I area are not violated, in which case if the state concurs, the state does not issue a permit. In a letter to EPA dated November 30, 2007, MDEQ committed to include these requirements in a future rule-making revision, to be completed no later than one year after EPA's conditional approval. Additionally, the state committed to clarify Rules R 332.2816 to more closely comport with 40 CFR 51.166(p). The proposed language, included in the November 30, 2007, letter is acceptable. Therefore EPA is proposing to conditionally approve this rule.

R 336.2817 Public Participation

This rule establishes the minimum acceptable opportunities for public comment on a proposed PSD permit. In its rules, Michigan is foregoing the right to one full year to act on a complete permit application, and is bound, instead, under the rules to act within 120 days. We approve this change. Rule R 336.2817 is consistent with 40 CFR 51.166(q).

R 336.2818 Source Obligation

This rule places additional requirements upon the PSD permit applicant, including recordkeeping requirements for applicants using certain methods for determining if a project results in a significant increase.

On December 31, 2002, EPA published revisions to the Federal PSD and non-attainment NSR regulations. These revisions are commonly referred to as ''NSR Reform'' regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, Plantwide Applicability Limits (PALs), Clean Units, and Pollution Control Projects (PCP). The Federal rules require a source to follow the recordkeeping and reporting requirements in this section if there is a ''reasonable possibility'' that a source may exceed the projected actual

emissions (40 CFR 51.166(r)(6)). The ''reasonable possibility'' clause of this provision of the Federal rule has been remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling in *State of New York et al.* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005). On December 14, 2007, EPA issued a final rule that provides additional explanation and more detailed criteria to clarify the ''reasonable possibility'' recordkeeping and reporting standard of the 2002 NSR reform rules. This final action will require recordkeeping and reporting when the projected increase in emissions to which the ''reasonable possibility'' test applies equals or exceeds 50 percent of the CAA's NSR significance levels for any pollutant.[1] MDEQ must submit a notice to EPA within 1 year from this conditional approval—before EPA takes final action to approve this aspect of the SIP—to acknowledge the rule change and that the PSD regulations will continue to follow the ''reasonable possibility'' provisions in a manner that is consistent with EPA's final rule. All the requirements of rule R 336.2818 are consistent with 40 CFR 51.166(r).

R 336.2819 Innovative Control Technology

This rule contains provisions allowing a PSD permit applicant to experiment with new control technologies to satisfy the BACT requirement. Rule R 336.2819 is consistent with 40 CFR 51.166(s).

R 336.2823 (1) to (14) Actuals Plantwide Applicability Limits (PALs)

This rule contains an alternate applicability method for determining if a source requires a PSD permit. Rule R 336.2823(1) to (14) is consistent with 40 CFR 51.166(w).

Rules Not Included in the PSD SIP

Subrule R 336.1823(15) contains provisions synchronizing the Michigan minor permit to install program with the new PAL provisions. This subrule is mainly concerned with state air toxics provisions and was not submitted as part of Michigan's PSD SIP. Therefore, EPA is not taking action on rule R 336.1823(15) as part of this rulemaking action.

[1] Currently, the MDEQ's minor source permitting program—Rule R 336.1201—requires this information to be submitted for all sources as part of a complete Permit to Install application before beginning actual construction on the proposed project (not just where there is a ''reasonable possibility'' that the source may exceed the projected actual emissions). Because this is more stringent than the Federal requirement, we approve this approach.

Rule R 336.2830 is intended to provide a parallel appeal procedure to the procedure that is currently in place for the Federal PSD program in Michigan under the regulation at 40 CFR 124. The rule creates a right to an administrative hearing before a state administrative law judge that is similar to the current appeal rights under the Federal PSD permitting program. This rule is not submitted as part of Michigan's PSD SIP. Therefore, EPA is not taking action on rule R 336.2830.

IV. What Action Is EPA Taking Today?

EPA is proposing to conditionally approve revisions to the SIP to include the PSD construction permit programs of the State of Michigan.

Conditions for Conditional Approval

As noted above, EPA has identified several minor deficiencies that are necessary to correct in Michigan's rules so that the rules are approvable. The areas of concern are discussed in more detail above. In a letter to EPA dated May 17, 2007, Michigan committed to follow the federal definition of *''replacement unit''* (40 CFR 51.166(b)(7)) in its implementation of these rules, and to add the definition to the state rules in a future rulemaking. For the definition of *''PTE'' (Rule 336.2801(hh))*, Michigan follows the federal definition, except instead of *''federally enforceable''*, the Michigan rules use the more general term *''legally enforceable''*. Michigan has committed, in a letter to EPA dated September 11, 2007, to apply the term *legally enforceable* to mean legally and practically enforceable by the EPA, a state or local air pollution agency, consistent with the Interim Policy dated January 22, 1996.

The state's current *Rule 336.2816* does not include a mechanism under which the Federal Land Manager may present to the state a demonstration of impacts of air quality-related values from proposed source/modification where maximum allowable increases for a Class I area are not violated, and if the state concurs it does not issue the permit (as per 40 CFR 51.166(p) (3)). In order to add the missing requirement for sources impacting federal Class I areas, MDEQ committed, in a letter to EPA dated November 30, 2007, to add these requirements through a future rule-making revision. Additionally, the state committed to clarify this state rule to more closely comport with federal requirements (The deficiencies being addressed are described in more detail above in Part III of this document entitled ''What Are The Changes That EPA is Conditionally Approving?'').

Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the state to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. In this action, we are proposing to approve the SIP revision that Michigan has submitted on the condition that the specified deficiencies in the SIP revision are corrected, as noted above, within a year of a final conditional approval of the rules.

If this condition is not fulfilled within one year of the effective date of final rulemaking by correction of all of the specified deficiencies, the conditional approval for the uncorrected sections of the state rules will automatically revert to disapproval, as of the deadline for meeting the conditions, without further action from the EPA. EPA would subsequently publish a notice in the **Federal Register** providing notice and details of such disapproval.

If Michigan submits final and effective rule revisions correcting the deficiencies, as discussed above, within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge conversion of the conditional approval to a full approval.

V. Statutory and Executive Order Reviews.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state

law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes approval of a state rule implementing a Federal Standard.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: December 27, 2007.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E8–186 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–5037; MB Docket No. 07–279; RM–11411]

Radio Broadcasting Services; Iola, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford (''Petitioner'') proposing the allotment of Channel 299A at Iola, Texas, as the first FM broadcast service at Iola. The proposed coordinates are 30–40–42 NL and 96–09–30 WL with a site restriction of 13.1 kilometers (8.1 miles) southwest of Iola, Texas.

DATES: Comments must be filed on or before February 11, 2008, and reply comments on or before February 26, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner and his counsel as follows: Charles Crawford; 4553 Bordeaux Ave.; Dallas, Texas 75295; and Gene A. Bechtel, Law Office of Gene Bechtel; 1050 17th Street, NW., Suite 600; Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 07–279, adopted December 19, 2007, and released December 21, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR Sections 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Iola, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–204 Filed 1–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–5036; MB Docket No. 07–281; RM–11408]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by L. Topaz Enterprises, Inc., requesting the allotment of Channels 274C3 and 284C3 at Elko, Nevada, as the community's fifth and sixth local aural transmission services. Channels 274C3 and 284C3 can be allotted at Elko, Nevada without a site restriction at coordinates 40–49–57 NL and 115–45–44 WL.

DATES: Comments must be filed on or before February 11, 2008, and reply comments on or before February 26, 2008.

ADDRESS: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: A. Wray Fitch, Esq., Gammon & Grange, PC, 8280 Greensboro Dr., 7th Floor, McLean, VA 22102–3807.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 07–281, adopted December 19, 2007, and released December 21, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada is amended by adding Channels 274C3 and 284C3 at Elko.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–205 Filed 1–8–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 6

Wednesday, January 9, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural-Business Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently approved information collection in support of the program for ''Renewal Energy and Energy Efficiency Improvements Program.''

DATES: Comments on this notice must be received by March 10, 2008, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: William C. Smith, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone: (202) 205–0903.

SUPPLEMENTARY INFORMATION:

Title: Renewal Energy and Energy Efficiency Improvements Program.

OMB Number: 0570–0050.

Expiration Date of Approval: July 31, 2008.

Type of Request: Extension of a currently approved information collection.

Abstract: The collection of information is vital for Rural Development to make wise decisions regarding the eligibility of applicants and borrowers, establish selection priorities among competing applicants, ensure compliance with applicable Rural Development regulations, and effectively monitor the grantees and borrowers activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. This information will be used to determine applicant eligibility, to determine project eligibility and feasibility, and to ensure that grantees/borrowers operate on a sound basis and use funds for authorized purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 hours per response.

Respondents: Farmers, Ranchers, and Rural Small Businesses.

Estimated Number of Responses per Respondents: 469.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Responses: 6,241.

Estimated Total Annual Burden on Respondents: 30,160.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 11, 2007.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–142 Filed 1–8–08; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain hot–rolled carbon steel flat products from India for the period January 1, 2006, through December 31, 2006, the period of review (POR). For information on the net subsidy rate for each reviewed company, see the ''Preliminary Results of Review'' section, *infra*. Interested parties are invited to comment on these preliminary results, see the ''Public Comment'' section, *infra*.

EFFECTIVE DATE: January 9, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the CVD order on certain hot–rolled carbon steel flat products from India. *See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001) (Amended Final Determination of HRC Investigation). On December 1, 2006, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543

(December 1, 2006) (*Opportunity to Request Review*).[1]

We received timely requests for review from Essar Steel Ltd. (Essar) and Ispat Industries Ltd. (Ispat), both Indian producers and exporters of subject merchandise on December 28, 2006. On December 29, 2006, we received a timely request for review from JSW Steel Ltd. (JSW)[2] and Tata Steel Ltd. (Tata), both Indian producers and exporters of subject merchandise. On January 3, 2007, we received an untimely request for review from petitioner.[3]

On February 2, 2007, the Department initiated an administrative review of the CVD order on certain hot–rolled carbon steel flat products from India, covering the period January 1, 2006 through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 5005 (February 2, 2007).

The Department issued a questionnaire to the Government of India (GOI), Essar, Ispat, JSW, and Tata (collectively, the respondents) on February 2, 2007. We received a questionnaire response from Essar on March 28, 2007, from Ispat on March 29, 2007, from JSW on April 4, 2007, from Tata on April 16, 2007, and from the GOI on April 23, 2007. From August 2007, through November 2007, we issued supplemental questionnaires to the respondents regarding programs addressed in the initial CVD questionnaire and received supplemental questionnaire responses. In the case of JSW, as explained below, it failed to fully respond to the Department's November 8, 2007, supplemental questionnaire.

On May 23, 2007, petitioner submitted new subsidy allegations against Essar, Ispat, JSW, and Tata. On September 13, 2007, the Department initiated an investigation of the new subsidies allegations against Ispat.[4] On September 20, 2007, we issued the new subsidies questionnaire to Ispat, the GOI and the state government of Maharashtra. On September 27, 2007, the Department initiated an investigation of the new subsidies allegations against JSW and Tata, respectively,[5] and issued new subsidies questionnaires to JSW, Tata, the GOI, the state government of Karnataka (regarding JSW's new subsidies allegations), and the state government of Jharkhand (regarding Tata's new subsidies allegations). On October 4, 2007, the Department initiated an investigation of the new subsidies allegations against Essar[6] and issued the new subsidies questionnaire to Essar, the GOI, and the state governments of Gujarat, Andhra Pradesh, and Chhattusgarh on October 5, 2007. From November 1, 2007, through November, 13, 2007, we received responses to the new subsidies questionnaires from Essar, Ispat, JSW, and Tata. From November 27, 2007, through December 12, 2007, we received responses to our new subsidies supplemental questionnaires from Essar, Ispat, and Tata. As explained below, JSW failed to respond to the Department's new subsidies supplemental questionnaire.

In the case of the GOI, on November 8, 2007, we received a questionnaire response pertaining to subsidies allegedly received by Tata. However, as explained below, in spite of receiving multiple extensions of the deadline to respond to the Department's new subsidies questionnaires, the GOI did not respond to the new subsidies questionnaires pertaining to Essar, Ispat, and JSW.

On August 2, 2007, the Department published in the **Federal Register** an extension of the deadline for the preliminary results of this review. *See Hot–Rolled Carbon Steel Products from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 72 FR 42399 (August 2, 2007).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are Essar, Ispat, JSW, and Tata. This review covers 56 programs.

Scope of Order

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high–strength low–alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: I) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or

[1] On December 18, 2006, we published a correction to the notice of *Opportunity to Request Review* to correct the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review; Correction*, 71 FR 75709 (December 18, 2006).

[2] JSW was previously known as Jindal Vijayanagar Steel Ltd. The company name was changed on June 16, 2005.

[3] Petitioner is United States Steel Corporation.

[4] *See* Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from Robert Copyak, Case Analyst, regarding New Subsidy Allegations for Ispat Industries Limited (February 13, 2007). This public document is available on the public file in the Department's Central Records Unit (CRU) located in room B-099.

[5] *See* Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from Kristen Johnson, Case Analyst, regarding New Subsidy Allegations for JSW Steel Ltd. (September 27, 2007) and Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from John Conniff, Case Analyst, regarding New Subsidy Allegations for Tata Steel Ltd. (September 27, 2007). The memoranda are public documents available on the public file in the CRU.

[6] *See* Memorandum to Melissa G. Skinner, Director, Office 3, through Eric B. Greynolds, Program Manager, from Gayle Longest, Case Analyst, regarding New Subsidy Allegations for Essar Steel Ltd. (October 4, 2007). This public document is available on the public file in the CRU.

0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico–manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Adverse Facts Available

I. The GOI

As discussed above, the Department initiated investigations of new subsidies allegedly provided to Essar, Ispat, JSW, and Tata by the GOI and Indian state governments. On September 20, 2007, the Department issued a questionnaire to the GOI pertaining to new subsidies allegedly received by Ispat. On September 27, 2007, the Department issued new subsidies questionnaires to the GOI pertaining to new subsidies allegedly received by JSW and Tata, respectively. On October 5, 2007, the Department issued a questionnaire to the GOI pertaining to new subsidies allegedly received by Essar.

At the request of the government, the Department extended the GOI's deadline to respond to the new subsidies questionnaires on multiple occasions. Specifically, on October 11, 2007, the Department granted the GOI an additional two weeks to respond to the new subsidies questionnaire covering Ispat. On October 12, 2007, the Department provided the GOI a two-week extension to respond to the new subsidies questionnaires covering Essar, JSW, and Tata. On October 24, 2007, the Department granted the GOI a seven-day extension to respond to the new subsidies questionnaire covering Ispat. On November 1, 2007, the Department granted the GOI a seven-day extension to respond to all four new subsidies questionnaires.

On November 8, 2007, the GOI submitted a questionnaire response pertaining to the new subsidies allegedly received by Tata. However, with respect to Essar, Ispat, and JSW, the GOI stated that ''since the information sought from the GOI is on the same lines as that sought from the respondent companies, the GOI has nothing further to add.'' In a November 14, 2007, letter to the GOI, the Department attached copies of the original new subsidies questionnaires pertaining to Essar, Ispat, and JSW and explained that the questions addressed to the GOI were distinct from those contained in the new subsidies questionnaires issued to the respective companies. In the letter the Department further explained that the GOI's failure to respond to the new subsidies questionnaires could result in the Department applying adverse inferences within the meaning of section 776(b) of the Tariff Act of 1930, as amended (the Act). The Department provided the GOI an additional 12 days to submit its questionnaire responses.

On November 26, 2007, the GOI requested a two-day extension to respond the new subsidies questionnaires covering Essar, Ispat, and JSW. In an amended submission, the GOI requested an additional five-day extension. On November 28, 2007, the Department rejected the GOI's extension requests explaining that the GOI's proposed extension would not provide the Department with sufficient time to analyze and incorporate information in the questionnaire responses prior to the preliminary results of review. *See* the Department's November 28, 2007, letter to the GOI, which in on the public record in the CRU.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; ©) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used,

and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because the GOI failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the new subsidies allegedly received by Essar, Ispat, and JSW constitute financial contributions and are specific within sections 771(D) and 771(5A) of the Act, respectively. Therefore, the Department must base its determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, we determine that, in accordance with sections 776(a)(2)(B) and 776(b) of the Act, the use of AFA is appropriate for the preliminary results with respect to newly alleged subsidy programs used by Essar, Ispat, and JSW.[7]

As noted, the Department extended the GOI's deadline to respond to the new subsidies questionnaires on multiple occasions. However, with the exception of the questionnaire pertaining to Tata, the GOI failed to submit responses to the new subsidies questionnaires pertaining to Essar, Ispat, and JSW. Therefore, consistent with section 776(a)(2)(B) of the Act, we find that the GOI did not act to the best of its ability and, therefore, we are employing adverse inferences in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that all newly alleged subsidy programs used by Essar, Ispat, and JSW constitute financial contributions and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.[8] Thus, in this segment of the proceeding, we preliminarily determine that any newly alleged programs used by Essar, Ispat, and JSW are countervailable to the extent that the programs conferred a benefit during the POR.[9] The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006), in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively. For a discussion of the Department's methodology of quantifying the AFA rate for JSW, see section ''II. JSW'' below. For the list of programs used by JSW to which we have assigned AFA rates, see section ''C. State Government of Karnataka Programs'' below.

II. JSW

As explained above, due to the GOI's failure to submit a timely response, we find that all newly alleged subsidy programs used by JSW constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively. In its November 1, 2007, response to the Department's new subsidies questionnaire, JSW indicated that it received assistance under the State Government of Karnataka's (SGOK) ''New Industrial Policy and Package of Incentives and Concessions of 1993.'' *See* JSW's November 1, 2007, Questionnaire Response to New Subsidies Allegations at 6–7 and Annexure A. However, in its response, JSW failed to provide complete answers with respect to the following newly alleged programs: ''GOI's Granting of Captive Mining Rights for Iron Ore,'' ''SGOK's New Industrial Policy and Package of Incentives and Concessions of 1993'' and ''Other SGOK Subsidies,'' which address subsidies allegedly received by Vijayanagar Minerals Private Limited (VMPL). VMPL is a joint venture between JSW and Mysore Minerals Limited (MML), a state–owned company located in Karnataka. In particular, JSW and VMPL failed to quantify the extent to which they used the new subsidy programs under examination.

On November 8, 2007, the Department issued a supplemental questionnaire to JSW and VMPL in which it sought to clarify the deficiencies. Subsequent to the issuance of the supplemental questionnaire, Department officials spoke with a JSW official to discuss the information requested in the supplemental questionnaire and answer JSW's questions regarding the subsidy programs under review. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, through Eric B. Greynolds, Program Manager, concerning Telephone Call to JSW (November 14, 2007).[10] The Department later reminded JSW that if the company needed additional time to respond to the supplemental questionnaire, which had a response due date of November 21, 2007, then JSW would have to file a letter requesting an extension of time to submit its response to the November 8, 2007, supplemental questionnaire. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, through Eric B. Greynolds, Program Manager, concerning Emails Sent to JSW (November 21, 2007).[11] JSW, however, did not submit a questionnaire response or letter requesting an extension to respond to the supplemental questionnaire.

In addition, JSW failed to completely respond to supplemental questions concerning the ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration'' program that were included in the Department's initial questionnaire. *See* JSW's October 22, 2007, Supplemental Questionnaire Response at 22 and JSW's November 19, 2007, Supplemental Questionnaire Response at 15–16 and Table A.

Because JSW failed to provide the information requested in the Department's supplemental questionnaires by the established

[7] As explained above, the GOI responded to the questionnaire pertaining to new subsidy programs allegedly received by Tata.

[8] Because the programs at issue are new and because the GOI failed to provide any information on how the alleged programs operate, in applying adverse inferences, we are unable to reference any sub-paragraphs under section 771(5)(D) and 771(5A) of the Act.

[9] In these preliminary results, we find that JSW used newly alleged programs. However, as noted below, based on information provided, we preliminarily determine that Essar and Ispat did not use any of the newly alleged programs. We invite parties to comment for the final results on whether, in light of the incomplete responses by the GOI with respect to these newly alleged programs, it would be more appropriate to use facts available in determining to what extent Essar and Ispat may have benefitted from these newly alleged programs.

[10] This public document is available on the public file in the CRU.

[11] This public document is available on the public file in the CRU.

deadlines, the Department does not have the necessary information on the record to determine the extent to which JSW benefitted from certain programs within the meaning of section 771(5)(E) of the Act. Therefore, the Department must base its determination on facts otherwise available in accordance with section 776(a)(2)(B) of the Act. Furthermore, we preliminarily determine that by failing to respond to the Department's supplemental questionnaires by the established deadlines, JSW has failed to cooperate to the best of its ability and, thus, pursuant to section section 776(b) of the Act, the use of adverse inferences in applying the facts otherwise available is warranted.

The Department's practice when selecting an adverse margin from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

In deciding which facts to use when calculating the AFA rate, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In its May 23, 2007, new subsidies allegation submission, petitioner did not provide estimated net subsidy rates regarding the new subsidies allegedly received by JSW.[12] Further, the additional subsidy programs pertaining to JSW were alleged for the first time in this administrative review and, thus, no information exists concerning these programs in prior segments of the proceeding.

Therefore, for each instance in which JSW failed to provide the information necessary for the Department to determine the extent to which JSW used a newly alleged subsidy program, we have, in accordance with section 776(b)(4) of the Act, relied upon the highest calculated net subsidy rate established for an industry–wide program in this proceeding. Specifically, we have utilized a net subsidy rate of 16.63 percent *ad valorem*, which corresponds to the net subsidy rate that Ispat received under the Export Promotion Capital Goods Scheme in the underlying investigation. *See Final Affirmative Countervailing Duty Determination: Certain Hot- Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001) (*Final Determination of HRC Investigation*), and accompanying Issues and Decision Memorandum (Final Determination of HRC Investigation Decision Memorandum) at ''Export Promotion of Capital Goods Scheme.'' This approach is consistent with the Department's practice. *See, e.g., Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at ''Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods,'' which states:

> This program was alleged for the first time in the *Pistachios New Shipper Reviews*, and thus was not among the programs addressed in *Roasted Pistachios*. However, lacking any information from Nima and the Government of Iran on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and, therefore, as adverse facts available, is the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

For additional information concerning the Department's treatment of these programs under AFA and for a list of programs used by JSW to which we have assigned AFA rates, see section ''C. State Government of Karnataka Programs'' below.

Further, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *Id.* at 869.

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the

[12] This pubic document is available on the public file in the CRU.

Department finds that the information used has been corroborated to the extent practicable.

JSW also reported using a program that was previously found to be countervailable (*i.e.*, ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration''), about which it failed to provided a complete response. As discussed above, we find that, by failing to provide a complete response concerning the program, JSW has failed to act to the best of its ability. Therefore, under section 776(b) of the Act, we have applied adverse inferences using, to the extent possible, the limited information provided by JSW along with other information on the record of this segment of the proceeding when calculating the benefit. For further information concerning the Department's calculation of the benefit received by JSW under the program, see the program description below. For those programs for which the GOI and JSW have provided complete responses, we are basing our determination of the countervailability of each program based on the information provided.[13] We invite parties to comment for the final results of review on whether, in light of the incomplete responses by JSW and the GOI for so many programs, it would, be more appropriate to use adverse inferences under section 776(b) of the Act in determining the countervailable benefits for all of JSW's programs.

Subsidies Valuation Information

I. Benchmarks for Loans and Discount Rates

Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company–specific cost of long–term, fixed–rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non–recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.*, fixed interest rate vs. variable interest rate), the maturity of the loan (*e.g.*, short–term vs. long–term), and the currency in which the loan is denominated.

For programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(2)(ii) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market,'' the Department will normally rely on actual short–term and long–term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government–owned bank for purposes of calculating benchmark rates.

For programs requiring a rupee–denominated discount rate or the application or a rupee–denominated long–term fixed–rate benchmark, we used, where available, company–specific, weighted–average interest rates on comparable commercial long–term, rupee–denominated loans. Some respondents, however, did not have comparable commercial long–term, rupee–denominated loans for all the required years. Therefore, for those years for which we did not have company–specific information, we relied on comparable long–term, rupee–denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there were no comparable long–term, rupee–denominated loans from commercial banks during either the year under consideration or the preceding year, pursuant to 19 CFR 351.505(a)(3)(ii), we used a national average interest rate as the benchmark. Specifically, we used India's prime lending rate (PLR), as published by the Reserve Bank of India (RBI), as our long–term benchmark interest rate. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, regarding India's Prime Lending Rate (November 28, 2007).[14] The use of the PLR is consistent with the Department's practice in prior Indian proceedings. *See*, *e.g.*, *Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004) (*Final Results of First HRC Review*), and accompanying Issues and Decision Memorandum (Final Results of First HRC Review Decision Memorandum) at ''Benchmarks for Loans and Discount Rate.''

For those programs requiring a foreign currency–denominated discount rate or application of a foreign currency–denominated long–term fixed–rate benchmark, we used, where available, company–specific, weighted–average interest rates of comparable commercial long–term loans, denominated in the same currency. Where no such benchmark instruments were available, consistent with 19 CFR 351.505(a)(3)(ii), we used currency–specific lending rates from private creditors as reported by the International Monetary Fund's (IMF) publication *International Financial Statistics*. The use of the IMF's publication for benchmark rate information is consistent with the Department's practice in prior Indian cases. *See* Final Determination of HRC Investigation Decision Memorandum at ''Benchmarks for Loans and Discount Rate,'' *see also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006) (*Final Determination of Lined Paper Investigation*), and accompanying Issues and Decision Memorandum (Final Determination of Lined Paper Investigation Decision Memorandum) at ''Benchmarks for Loans and Discount Rate.''

For variable–rate rupee–denominated or foreign currency–denominated loans outstanding during the POR, our preference is to use the interest rates of variable–rate lending instruments issued during the year in which the government loans were issued, pursuant to 19 CFR 351.505(a)(5)(i). Where such benchmark instruments were unavailable, we used interest rates from loans issued during the POR as our benchmark, as such rates better reflect a variable interest rate that would be in effect during the review period. In one instance, company–specific variable–rate Libor information was not available. We, therefore, sourced Libor benchmark data from the British Banker's Association. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, regarding Libor Rates (November 28, 2007).[15]

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government–provided, short–term loan, the preference is to use an annual average of the interest rates on comparable commercial loans during

[13] We invite parties to comment for the final results of review on whether, in light of the incomplete responses by JSW and the GOI for so many programs, it would be more appropriate to use adverse inferences under section 776(b) of the Act in determining the countervailable benefits for all of JSW's programs.

[14] This public document is available on the public file in the CRU.

[15] This public document is available on the public file in the CRU.

the year in which the government–provided loan was taken out, weighted by the principal amount of each loan. For this review, we required both US dollar–denominated and rupee–denominated short–term loan benchmark rates to determine benefits received under the Pre–Shipment Export Financing and Post–Shipment Export Financing programs. Absent a company–specific, commercial interest rate denominated in rupees to calculate the benefit, we sourced a rupee–denominated short–term interest rate for India as reported in the IMF's *International Financial Statistics*. Where we did not have comparable, company–specific short–term loans denominated in US dollars, we used the dollar–denominated short–term interest rate for the United States as reported in *International Financial Statistics*. *See e.g.*, the ''Benchmarks for Loans and Discount Rate'' section of the Final Determination of Lined Paper Investigation Decision Memorandum.

II. Use of Uncreditworthy Benchmarks for Essar

In the administrative review covering the period April 20, 2001, through December 31, 2002, we found Essar to be uncreditworthy during 2001 and 2002. *See Final Results of First HRC Review*. As no new evidence has been provided to the Department with respect to Essar's uncreditworthiness during 2001 and 2002, we will continue to apply the uncreditworthy benchmark methodology for those programs requiring a long–term benchmark for 2001 and 2002. For our long–term interest rates, we used India's PLRs and converted those rates into benchmark interest rates for Essar using the formula set forth in 19 CFR 351.505(a)(3)(iii).

III. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non–recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS tables), as updated by the U.S. Department of the Treasury. This presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under review, and the party can establish that the difference between the company–specific or country–wide AUL for the industry under review is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture products such as hot–rolled carbon steel flat products, the IRS tables prescribe an AUL of 15 years.

In their questionnaire responses, the respondents did not rebut the regulatory presumption of a 15-year AUL. We, therefore, used a 15-year AUL to allocate any non–recurring subsidies for purposes of these preliminary results.

Further, for non–recurring subsidies, we have applied the ''0.5 percent test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

In the case of Tata, for certain years we lacked export sales data needed to conduct the ''0.5 percent test'' corresponding to non–recurring subsidies Tata received prior to the POR. Therefore, for purposes of these preliminary results, we derived the export sales denominators utilized in the ''0.5 percent test'' using information provided by Tata in its questionnaire responses as well as information contained in Tata's annual reports, which are publicly available on the internet and placed on the record of this segment of the proceeding.[16] Specifically, we calculated the ratio of Tata's export sales to total sales for the POR. We then multiplied this ratio by Tata's total sales in prior years, as indicated in its annual reports. For further information, see Tata's preliminary results calculation memorandum.

Analysis Of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. GOI Programs

1. Pre- and Post–Shipment Export Financing

The RBI provides short–term pre–shipment export financing, or ''packing credits,'' to exporters through commercial banks. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre–shipment loans for working capital purposes. Exporters may also establish pre–shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI. For post–shipment export financing, exporters are eligible to receive post–shipment short–term credit in the form of discounted trade bills or advances by commercial banks at preferential interest rates to finance the period between the date of shipment of exported merchandise and payment from export customers (transit period).

The Department has previously determined that these export financing programs are countervailable to the extent that the interest rates are capped by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. *See*, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007) (*Final Results of 3rd PET Film Review*), and accompanying Issues and Decision Memorandum (Final Results of 3rd PET Film Review Decision Memorandum) at ''Pre–Shipment and Post–Shipment Export Financing.'' Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act and that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. The Department also found this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances has been presented in this review to warrant a reconsideration of the Department's finding.

Essar and Ispat reported rupee–denominated, pre–shipment loans outstanding during the POR. Essar reported U.S. dollar–denominated, pre–shipment export loans outstanding during the POR. Tata and Ispat reported U.S. dollar–denominated, post–shipment loans outstanding during the POR. However, Ispat indicated in its questionnaire response that it paid no interest on its post–shipment loan during the POR. Therefore, for purposes of these preliminary results, we have not calculated a benefit for Ispat's post–shipment loan, as no interest was due during the POR.

To calculate the benefit conferred by the pre–shipment and post–shipment loan programs, we compared the actual interest paid on the loans with the amount of interest that would have been

[16] Information from Tata's annual reports is included in Tata's preliminary results calculation memorandum.

paid at the benchmark interest rates. We used a rupee- or US dollar–denominated benchmark, as appropriate (*see* ''Subsidies Valuation Information'' section, *supra*). Where the benchmark interest exceeds the actual interest paid, the difference constitutes the benefit. For pre–shipment loans, we calculated the company–specific program rates by dividing the benefit received by the company during the POR by the company's total exports during the POR.

For pre–shipment loans, we calculated the net subsidy rate by dividing the benefit by the participating company's total exports, consistent with the Department's practice. *See*, *e.g.*, Final Determination of Lined Paper Investigation Decision Memorandum at ''Pre- and Post–Shipment Export Financing.'' Because post–shipment loans are granted for particular shipments, our practice is to treat them as tied to particular markets, in accordance with 19 CFR 351.525(b)(2). *Id.* Therefore, to calculate each company's subsidy rate for post–shipment financing, we divided the benefit received by the company during the POR by the company's exports of subject merchandise to the United States during the POR.

We preliminarily determine the net countervailable subsidy rate under the pre–shipment export financing program to be 5.00 percent *ad valorem* for Essar and 0.03 percent *ad valorem* for Ispat. We preliminarily determine that no benefit was provided to Tata under the post–shipment export financing program during the POR.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at a reduced customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 Crore[17]) from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

The Department has previously determined that the import duty reductions provided under the EPCGS constitute a countervailable export subsidy. *See*, *e.g.*, Final Results of 3rd PET Film Review Decision Memorandum at ''Export Promotion Capital Goods Scheme;'' *see also* Final Determination of Lined Paper Investigation Decision Memorandum at ''Export Promotion Capital Goods Scheme.'' Specifically, the Department has found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of Act, in the form of revenue foregone that otherwise would be due. The tax savings confer a benefit, as defined by section 771(5)(E) of the Act. The Department also found this program to be specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

Essar, Ispat, JSW and Tata reported that they received import duty reductions under the EPCGS program. For these preliminary results, we have determined the benefit for each respondent in accordance with our findings and treatment of this program in other Indian CVD proceedings. *Id.* Under the Department's approach, there are two types of benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department's practice to treat any balance on an unpaid liability as an interest–free loan. *See* 19 CFR 351.505(d)(1).

For those EPCGS licenses for which JSW, Essar, Tata, and Ispat have not yet met the export obligations specified in the licenses by the end of the POR, we preliminarily find that the companies had outstanding contingent liabilities during the POR. We further determine that the amount of the contingent liability to be treated as an interest–free loan is the amount of the import duty reduction or exemption for those EPCGS licenses for which JSW, Essar, Tata, and Ispat applied but, as of the end of the POR, have not received a waiver of their obligations to repay the duties from the GOI.

Accordingly, for those unpaid duties for which JSW, Essar, Tata, and Ispat have yet to fulfill their export obligations, we preliminarily find the benefit to be the interest that they would have paid during the POR had they borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long–term interest rate as our benchmark to calculate the benefit of a contingent liability interest–free loan because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for the companies to fulfill their export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the long–term benchmark interest rates as described in the ''Subsidies Valuation'' section, *supra*. The rate used corresponds to the year in which the companies imported the items under the program.

Further, consistent with our policy, absent acknowledgment in the form of an official letter from the GOI that the liability has been eliminated, we treat benefits from these licenses as contingent liabilities. *See e.g.*, Final Results of 3rd PET Film Review Decision Memorandum ''Export Promotion Capital Goods Scheme;'' *see also* Final Determination of Lined Paper Investigation Decision Memorandum at ''Export Promotion Capital Goods Scheme.''

The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which export requirements have been met. For certain licenses, JSW, Essar, Tata, and Ispat reported that they had completed their export obligation under the EPCGS program, thereby eliminating the outstanding contingent liabilities on the corresponding duty exemptions. However, as explained above, in keeping with our practice, we have only accepted those claims that are accompanied by official letters from the GOI indicating that the company met its export obligation. Thus, for purposes of calculating the benefit, we treated licenses without accompanying letters from the GOI as contingent liabilities.

For those licenses for which respondents demonstrated that they had fulfilled the export obligations, we followed our methodology set forth in the *Final Determination of Lined Paper Investigation* and treated the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemptions. In accordance with 19 CFR 351.524(b)(2), for each of the grant amounts, we performed the ''0.5 percent test'' to determine whether the benefit should be fully expensed in the year of receipt or allocated over the AUL used in this proceeding pursuant to the grant allocation methodology set forth in 19 CFR 351.524(d)(1).

JSW, Essar, Tata, and Ispat reported that they paid application fees in order to obtain their EPCGS licenses. We preliminarily find that the application fees paid qualify as an ''application fee,

[17] A crore is equal to 10,000,000 rupees.

deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* Section 771(6)(A) of the Act. As a result, we have offset the benefit in an amount equal to the fees paid.

To calculate the company–specific subsidy rates for this program, we summed the benefits from the waived licenses, which we determine confer a benefit in the form of a grant, and from those licenses that have yet to be waived, which we determine confer a benefit in the form of contingent liability loans. With respect to licenses related to imports of capital goods during the POR, we prorated the contingent liability by the actual number of days the contingent liability was in effect during the POR. *See* Final Determination of Lined Paper Investigation Decision Memorandum at ''Export Promotion Capital Goods Scheme.'' We then divided the total benefits received by each company by the company's total export sales for the POR. Ispat reported making deemed export sales during the POR. Consistent with our approach in the *Final Results of the 3rd PET Film Review*, we included deemed exports in the denominator of the net subsidy rate calculation. *See* Comment 1 of the Final Results of 3rd PET Film Review Decision Memorandum. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.53 percent *ad valorem* for Essar, 10.51 percent *ad valorem* for Ispat, 1.71 percent *ad valorem* for JSW, and 4.28 percent *ad valorem* for Tata.

3. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor program to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post–export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for 12 months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION for the steel industry.

The Department has previously determined that DEPS is a countervailable program. *See*, *e.g.*, Final Determination of Lined Paper Investigation Decision Memorandum at ''Duty Entitlement Passbook Scheme.'' Specifically, we determined that under DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) the GOI provides credits for the future payment of import duties, and (2) the GOI does not have in place and does not apply a system that is reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts. *Id*. Therefore, under section 771(5)(E) of the Act, we determined that the entire amount of import duty exemption earned during the POR constitutes a benefit.[18] We also found DEPS to be specific under section 771(5A)(B) of the Act because the program can only be used by exporters. *See* Final Determination of Lined Paper Investigation Decision Memorandum at ''Duty Entitlement Passbook Scheme.'' No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of the Department's finding.

We have previously determined that this program provides a recurring benefit under 19 CFR 351.519(c). *See e.g.*, *Preliminary Determination of Lined Paper Investigation* 71 FR 7916, 7920 (unchanged in *Final Determination of Lined Paper Investigation*). In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we preliminarily find that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the DEPS credits are earned. *See*, *e.g.*, *Final Affirmative Determination: Certain Cut–to-Length Carbon–Quality Steel Plate from India*, 64 FR 73131 (December 29, 1999) (*Final Determination of CTL Plate Investigation*) at Comment 4 (explaining that for programs such as the DEPS, ''we calculate the benefit on an 'earned' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment–by-shipment basis and the exact amount of the exemption is known'').

For those DEPS credits that JSW and Tata earned during the POR, we followed our past practice and calculated the benefit under the DEPS program by multiplying the FOB value of each export shipment to the United States during the POR by the relevant percentage of DEPS credit allowed under the program. *Id*. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act.

Because DEPS credits are earned on a shipment–by-shipment basis, in calculating the benefit from the DEPS program, we normally calculate the net subsidy rate by dividing the benefit earned on subject merchandise export shipments to the United States by total sales of subject merchandise to the United States during the POR. In the case of JSW and Tata, we have followed this calculation methodology.

On this basis, we preliminarily calculate the net countervailable subsidy from the DEPS program to be 2.56 percent *ad valorem* for JSW, and 1.29 percent *ad valorem* for Tata.

4. Sale of High–Grade Iron Ore for Less Than Adequate Remuneration

The Department has previously determined that the GOI provides high–grade iron ore to steel producers for less than adequate remuneration through the government–owned National Mineral Development Corporation (NMDC). *See Notice of Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006) (*Final Results of Second HRC Review*), and accompanying Issues and Decision Memorandum (Final Results of Second HRC Review Decision Memorandum) at ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration,'' *see also Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 71 FR 1512, 1516 (January 10, 2006) (*Preliminary Results of Second HRC Review*). NMDC is governed by the Ministry of Steel and the GOI holds 98 percent of its shares. No new information has been provided to the Department by the GOI to warrant a reconsideration of our finding. Therefore, for this review, we preliminarily find that the GOI directly, through the government–owned NMDC, continues to provide a financial contribution as defined under section 771(5)(D)(iii) of the Act and that the GOI's provision of high–grade iron ore is specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipient of the subsidy is limited to industries that use iron ore, including the steel industry, and is thus limited in

[18] Specifically, we found that benefits under the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See e.g.*, *Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products From India*, 71 FR 7916, 7920 (February 15, 2006) (*Preliminary Determination of Lined Paper Investigation*) (unchanged in *Final Determination of Lined Paper Investigation*).

number. Essar, Ispat, and JSW reported that they purchased high–grade iron ore lumps and fines (*i.e.*, iron ore with Fe content of 64 percent or above) from the NMDC during the POR.

Section 771(5)(E)(iv) of the Act provides that a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Pursuant to 19 CFR 351.511(a)(2)(i) the Department will normally seek to measure the adequacy of remuneration by comparing the government price for the goods or service to a market–determined price resulting from actual transactions in the country in question. The regulations provide that such market–determined prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions.

Ispat provided information concerning its purchases of iron ore lumps from private suppliers within India during the POR. There is no information on the record that suggests such private supplier prices do not reflect actual market–determined prices in India for comparable ore, or that such private–supplier prices have been distorted by GOI involvement in the market. Therefore, pursuant to 19 CFR 351.511(a)(2)(I), we used such private prices as our benchmark for purposes of calculating the benefit from Ispat's purchases of iron ore lumps from the GOI.

We made the following adjustments to the private iron ore lumps price used as the benchmark to measure the adequacy of remuneration of Ispat's purchases of iron ore lumps from the GOI. First, we calculated on a monthly basis a price per wet metric ton (including freight to the port). Next, we divided the sum of the monthly total costs by the total quantity of iron ore lumps Ispat purchased for the year. We then divided the resulting annual unit price by the corresponding iron ore content to arrive at the benchmark unit cost per Fe content (iron ore is priced by one unit of Fe content). Next, to ensure that the benchmark price reflects the same level of Fe content as the government price, we multiplied the benchmark unit cost per Fe content by the Fe content of the iron ore lumps Ispat purchased from the GOI.

With respect to Essar's purchases of iron ore lumps and fines from the GOI, the record of this review contains no information on actual transaction prices between private parties in India, imports, or sales from government auctions that can be used to measure any benefit to Essar as a result of this program.[19] Further, Ispat reported that it did not have any transactions between private parties in India, imports, or sales from government auctions of iron ore fines during the POR. Thus, for these transactions, the Department is unable to measure the adequacy of remuneration using actual market–determined prices in India, as directed by 19 CFR 351.511(a)(2)(i).

Under 19 CFR 351.511(a)(2)(ii), where actual market–determined prices are not available with which to make the comparison under paragraph (a)(2)(i), the Department will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such prices would be available to purchasers in the country in question. This second tier directs the Department to examine prices which it would be reasonable to conclude that purchasers could obtain in India. There are publications on the record that include prices from the world market for comparable goods which can be used as a benchmark to determine whether the GOI sold high–grade iron ore to the respondents for less than adequate remuneration. Specifically, several copies of the *Tex Report*, a daily Japanese publication that reports on world–wide price negotiations for iron ore, are on the record and include prices for high–grade iron ore that were set for 2006.[20] Therefore, consistent with our approach in the *Final Results of Second HRC Review*, we continue to find that the prices reported in the *Tex Report* constitute world market prices that would be available to the respondents in accordance with 19 CFR 351.511(a)(2)(ii). *See* Final Results of Second HRC Review Decision Memorandum at ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration.''

To measure the adequacy of remuneration of Essar's purchases of iron ore lumps and fines from the GOI and Ispat's purchases of iron ore fines from the GOI, we compared the prices that each company actually paid for its high–grade iron ore lumps and fines, on an fob port basis, to an average of the fob port prices of high–grade iron ore lumps and fines set forth in the *Tex Report*. We made the following adjustments to the benchmark information. We converted the iron ore lumps and fines' prices listed in U.S. cents per dry long ton to U.S. dollars. We then multiplied the per unit U.S. dollar price by the corresponding percentage of iron content (iron ore is priced by one unit of Fe content) to calculate a U.S. dollar high–grade iron ore amount. Next, we converted the U.S. dollar per unit price from dry long tons to metric tons. We then converted the U.S. dollar per unit price from metric tons to wet metric tons. Next, we applied the average exchange rate for 2006 to calculate a Rupee per wet metric ton price for high–grade iron ore. We then averaged the prices to arrive at the benchmark used to compare against Essar's and Ispat's respective purchases of high–grade iron ore.

To calculate the benefit, we multiplied the difference between the benchmark price and the government price by the quantity of iron ore lumps and fines purchased from the GOI. We then divided that amount by Essar's and Ispat's respective total sales for 2006. On this basis, we preliminarily calculate a net countervailable subsidy rate of 6.11 percent *ad valorem* for Essar and 0.54 percent *ad valorem* for Ispat.

As noted, JSW reported that it purchased high–grade iron ore fines and lumps from NMDC during the POR. JSW, however, submitted incomplete information to the Department's questions concerning the purchases. In particular, JSW submitted only the quantity of iron ore purchased from NMDC and no associated pricing data. *See* JSW's November 19, 2007, Supplemental Questionnaire Response at Table A. Therefore, as AFA, for these preliminary results, we find that JSW received the iron ore from NMDC at no charge during the POR. To calculate the benefit, we multiplied the quantity of iron ore JSW received from NMDC in 2006, by the benchmark price for iron ore fines and lumps, obtained from the *Tex Report*. We then divided the benefit by JSW's total sales for 2006. On this basis, we preliminarily calculate a program rate of 9.01 percent *ad valorem* for JSW.

5. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have

[19] The information, noted above, that Ispat provided concerning its purchases of iron ore lumps from private suppliers within India is business proprietary. As such, we are unable to use these private supplier prices to calculate a benefit for other recipients of either this program or the ''Captive Mining of Iron Ore'' program, noted below.

[20] Copies of several issues of the *Tex Report* reporting on negotiated iron ore prices with Australian, Brazilian iron ore producers and Japanese and European steel makers were submitted on the record by the GOI on November 15, 2007, and by Essar on November 14, 2007.

fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through SIONs established by the GOI. During the POR, Essar and Ispat used advance licenses to import certain materials duty free.

The Department has previously found this program to be countervailable because under the 2002 - 2007 Export/Import Policy Guidelines, the GOI does not have in place, and does not apply, a system that is reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts, in accordance with 19 CFR 351.519(a)(4). *See e.g.*, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*Final Results of 2nd PET Film Review*), and accompanying Issues and Decision Memorandum (Final Results of 2nd PET Film Review Decision Memorandum) at ''Advance License Program'' and ''Comment 1;'' *see also* Final Determination of Lined Paper Investigation Decision Memorandum at ''Advance License Program.'' In the *Final Results of 2nd PET Film Review*, the Department found that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4) to confirm which inputs and in what amounts are consumed in the production of the exported products; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is contingent upon exportation and, therefore, is specific under section 771(5A)(B) of the Act. *See* Final Results of 2nd PET Film Review Decision Memorandum at Comment 1.

Also, in the *Final Results of 2nd PET Film Review*, the Department identified a number of systemic deficiencies that led to its determination, specifically: (1) the lack of information related to verification or implementation of penalties and the failure to identify the number of companies during the POR that either did not meet export commitments under the ALP, were penalized for not meeting the export requirements under the ALP, or were penalized for claiming excessive credits; (2) the availability of ALP benefits for a broad category of ''deemed'' exports; and (3) the GOI's inability to provide the SION calculations for the PET film industry or any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the PET film SION. *Id.*

In the *Final Determination of Lined Paper Investigation*, the Department stated that it had examined certain monitoring procedures with respect to the GOI's tracking of inputs and exports through the Directorate General for Foreign Trade (DGFT), and the tracking of inputs imported duty–free under the ALP through a customs database. *See* Final Determination of Lined Paper Investigation Decision Memorandum at Comment 10. However, in the investigation, the Department ultimately determined that, in spite of these procedures, systemic issues continued to exist that demonstrate that the GOI lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. For example, in the *Final Determination of Lined Paper Investigation*, the Department explained that while we confirmed at verification that the GOI had recently updated the SION for the lined paper industry, the GOI was unable to provide source documents concerning the initial formation and subsequent revision of the SION used for the lined paper industry, including the SION in effect during the period of investigation. *Id.* The Department further stated that neither the GOI nor the respondent claimed that the laws and procedures underlying the ALP had changed with respect to the issue of ''deemed exports'' during that investigation. Thus, the Department determined that the respondent failed to provide information demonstrating that the ALP was implemented and monitored effectively during the period of investigation, and continued to find that the GOI had not demonstrated that it had carried out an examination of actual inputs involved to confirm which inputs were consumed in the production of the exported product, and in what amounts or that the ALP was reasonable and effective for the purposes intended.

In this administrative review, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for ALP prior to the POR. Specifically, the GOI revisions, introduced on May 13, 2005, provided for a mechanism to review a SION and monitor a company's consumption and stocks of duty–free, imported or domestically procured, raw materials. The GOI revised its Foreign Trade Policy and Handbook of Procedures to update its consumption register on inputs imported and inputs consumed to be filed by companies with the DGFT.[21] Further, the GOI stated that in the case of excess duty–free inputs, penalties have been put in place for the exporter.

In addition, the GOI argues that it has also put into place an internal system of regularly monitoring and reviewing SIONs. The GOI refers to Chapter 4, paragraphs 4.10–4.10.2 of the Foreign Trade and Policy Handbook of Procedures, which states that:

> {a}t the beginning of the financial year or at any other time as the {Norms Committee (NC)} may find it necessary, NC may identify the SIONs which in its opinion are required to be reviewed. The exporters are required to submit revised data in form given in 'Aayaat Niryaat Form' for such revision. It is mandatory for the industry/exporter(s) to provide production and consumption data etc. as may be required by DGFT/EPC for revision of SION. Otherwise, the applicant shall not be allowed to take the benefit of Advance Authorization Scheme.

In addition, in this administrative review the GOI argues that advance licenses are issued with actual user conditions and are not transferable even after completion of the export obligation.

The Department has analyzed the changes introduced by the GOI to the ALP during 2005 and acknowledges certain improvements to the ALP system. However, we preliminarily determine that systemic issues continued to exist in the ALP system during the POR, all of which were enumerated in the *Final Results of 2nd PET Film Review* and the *Final Determination of Lined Paper Investigation*. For example, while the GOI pointed to provisions in the Handbook of Procedures that lay out the procedures for the levying of penalties, the GOI did not demonstrate any enforcement of these deadlines and actual application of the penalty provisions. *See* Final Results of 2nd PET

[21] The revision pertains to Appendix 23, which replaced the previous version, Appendix 18 of the Foreign Trade Policy and Handbook of Procedures. Appendix 23 states the consumption and stock of inputs for each SION. It provides details of inputs, quantity imported, name of the finished product produced, quantity of the finished product, inputs actually consumed for the exported product, excess imports, if any, and actual consumption. According to the GOI, producers/exporters are required to file Appendix 23 with the DGFT at the beginning of each year. According to the GOI, the details of Appendix 23 are then cross-verified and authenticated by independent chartered accountants.

Film Review Decision Memorandum at ''Advance License Program'' and Final Determination of Lined Paper Investigation Decision Memorandum at ''Advance License Program.'' In addition, the GOI did not place any supporting documentation on the record of this review that demonstrates enforcement procedures for the DGFT and the Customs Authorities, respectively, as addressed in the Final Results of 2nd PET Film Review Decision Memorandum, and as requested in the initial and supplemental questionnaires of this review.

Furthermore, while the GOI points to certain provisions that provide for the review of SIONs, the GOI was not able to demonstrate the existence of a legal or regulatory requirement or process required for the DGFT to monitor the continued accuracy of the SION. Also, the GOI did not provide a layout of the regulatory procedures regarding the review of the SION or revision and selection of SIONs. Instead, the GOI stated that it decides which SIONs are to be reviewed based on the inputs received from various concerned government authorities. Thus, we preliminarily determine the GOI has not demonstrated that it has a process in place to ensure that all SIONs are reviewed regularly and consistently as part of the ALP monitoring system.

Therefore, despite the changes to the ALP noted by the GOI, we preliminarily determine that systemic problems continue to exist, and consequently we find that the GOI lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519.

Pursuant to 19 CFR 351.519(c), the exemption of import duties on inputs consumed in production of an exported product normally provides a recurring benefit. Under this program Essar and Ispat did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we treated the benefit provided under the ALP as a recurring benefit. To calculate the subsidy, we first determined the total value of duties exempted during the POR for each company. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act.

Consistent with our practice, we attributed benefits under the ALP to the recipient's export sales. Accordingly, to calculate the net subsidy rate, we divided the resulting net benefit by Essar's and Ispat's respective total export sales for the POR. Consistent with our approach in recent Indian proceedings involving the ALP, we preliminarily determine that ''deemed export'' sales should be included in the export sales denominator for the ALP program only when the respondent applied for and was granted licenses during the POR based on both physical exports and deemed exports. *See* Comment 1 of the Final Results of 3rd PET Film Review Decision Memorandum.

As noted above, Ispat reported deemed export sales during the POR. Because Ispat did not provide information regarding the extent to which its licenses were earned via deemed exports, we have therefore limited the denominator of the net subsidy rate calculation to physical exports. On this basis, we preliminarily determine the net countervailable subsidy rate under the ALP to be 0.13 percent *ad valorem* for Essar and 0.50 percent *ad valorem* for Ispat.

6. Loan Guarantees from the GOI

In the underlying investigation, the Department found that the GOI or State Bank of India (SBI) provides loan guarantees on a case–by-case basis to particular industrial sectors. *See Final Determination of HRC Investigation*, 64 FR at 73137. We further determined, in accordance with section 771(5)(D)(i) of the Act, that GOI loan guarantees confer countervailable subsidies because they result in a financial contribution by the government in the form of a potential direct transfer of funds or liabilities. In accordance with section 771(5)(E)(iii) of the Act, the loan guarantees provide a benefit to the recipient in the amount of the difference between the amount the recipient pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no government guarantee. Moreover, as we determined in the *Final Determination of HRC Investigation*, these loan guarantees are limited to certain companies selected by the GOI on an ad hoc basis and, thus, the program is specific under section 771(5A)(D)(iii)(II) of the Act. *Id.*

In the instant review, JSW reported having loan guarantees from the SBI for certain long–term foreign currency denominated loans outstanding during the POR. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of the Department's finding that loan guarantees from the SBI are countervailable.

In order to determine whether the government guarantees that JSW received conferred a benefit under section 771(5)(E)(iii) of the Act, we compared the total amount JSW paid for the guaranteed loans with the benchmark interest rates that would have been charged on a comparable commercial loan.[22] Consistent with the approach discussed in the ''Subsidies Valuation Information'' section, *supra*, where available, as our benchmark we used the interest rate on comparable, foreign currency loans that JSW received from commercial lenders. Where company–specific benchmarks were unavailable, consistent with our practice, we used the lending rate for the appropriate foreign currency, as reported by the IMF. *See* Final Determination of HRC Investigation Decision Memorandum at ''Benchmarks for Loans and Discount Rate.''

To calculate the net subsidy rate, we divided the benefit by JSW's total sales. On this basis, we calculated net subsidy rate of 0.01 percent *ad valorem* for JSW.

7. Steel Development Fund Loans

The Steel Development Fund (SDF) was established in 1978, during a time when the steel sector in India was subject to price and distribution controls. From 1978 through 1994, India's integrated steel producers, SAIL, Tata, Rashtriya Ispat Nigam Limited (RINL), and India Iron & Steel Company Limited (IISCO), were mandated by the GOI to increase the prices for the products they sold. The proceeds from the price increases (*i.e.*, levies) were remitted to the SDF. Under the SDF program, companies that contributed to the fund are eligible to take out long–term loans at advantageous rates. Loans from the SDF are made for the following purposes: (1) finance capital improvements and research and development projects; (2) provide funding for rebates to the Small Scale Industries Corporations on supplies by those companies; and (3) meet the expenditures of the Economic Research Unit of the Joint Plant Committee (JPC).

In the underlying investigation, the Department examined loans under the SDF. *See* Final Determination of HRC Investigation Decision Memorandum at ''Loans from the Steel Development Fund.'' The Department found that the Commission for Iron and Steel, which is known as CI&S, is led by the Secretary of the Ministry of Steel. This official is an ex–officio member of the SDF Managing Committee, and Chairman of

[22] There is no information on the record regarding what, if any, guarantee fees may have applied, so no adjustment has been made in this regard.

the JPC. The issuance and administration of loans under the SDF program are supervised by the JPC. However, according to the GOI, all of the SDF's lending decisions are subject to the review and approval of the SDF Managing Committee. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: Certain Hot–Rolled Carbon Steel Flat Products From India*, 66 FR 20240, 20248 (April 20, 2001) (*Preliminary Determination of HRC Investigation*) (unchanged in the *Final Determination of HRC Investigation*).

In the underlying investigation, we also found that the levies originated from producer price increases that were mandated and determined by the JPC. Because the Secretary of the Ministry of Steel, in his capacity as the head of the CI&S, acts as an ex–officio member and Chairman of the JPC, we determined that the GOI, through the JPC, has a controlling interest in the manner and amount of contributions that are made to the SDF. *See Preliminary Determination of HRC Investigation*, 66 FR at 20248 (unchanged in *Final Determination of HRC Investigation*). In particular, we found that during the period in which the funds for the SDF were provided, the GOI controlled the price of steel products in India. In order to create the SDF, the GOI, acting through the JPC, mandated steel price increases which were earmarked for the SDF. Steel producers collected this price increase, which was paid by steel consumers in India, and these additional funds were then placed into the SDF as a source of concessional financing for the Indian steel industry. Therefore, in the underlying investigation, we concluded that the GOI played a direct role in the creation of the SDF by mandating price increases on steel products, which were authorized for use solely as a source of funds for the SDF. *Id*.

Under section 771(5)(B) of the Act, a subsidy can be found whenever the government makes a financial contribution, when it provides a payment to a funding mechanism to provide a financial contribution, or when it entrusts or directs a private entity to make a financial contribution. In the underlying investigation, we determined that the GOI directed the contribution of funds for the SDF within the meaning of section 771(5)(B) of the Act, by levying price increases on steel products which were routed into the SDF. Furthermore, because the Secretary of the Ministry of Steel has a major leadership role in the JPC and the SDF Managing Committee, the bodies that issue and administer loans under the SDF, we determined that the GOI exercises control over the way in which funding is disbursed under this program. *Id*.

Therefore, in the underlying investigation, we determined that loans under the SDF constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. We also determined that loans under the SDF are specific within the meaning of section 771(5A)(D)(i) of the Act because eligibility for loans from the SDF is limited to steel companies. We further found that loans under the SDF program confer a benefit under section 771(5)(E)(ii) of the Act to the extent that the interest paid under the program during the POR was less than what would have been charged on a comparable commercial loan. *Id*. No new or substantive evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination.

In the instant administrative review, Tata reported SDF loans outstanding during the POR. In order to determine whether Tata's loans under the SDF program conferred a benefit within the meaning of section 771(5)(E)(ii) of the Act, we compared the actual interest rates charged to the benchmark interest rates that would have been charged on a comparable commercial loan. As discussed in the ''Subsidies Valuation Information,'' *supra*, where available we used as our benchmark the weighted–average interest rates on Tata's rupee–denominated, long–term loans. For those years in which no company–specific long–term benchmark was available for Tata, we used the average interest rate for India's PLR, as published by the RBI. Our comparison of the interest rates indicates that the interest rate payments that Tata made under the SDF program were less than what it would have otherwise paid on a comparable commercial loan. Thus, we preliminarily determine that the interest savings realized under this program conferred a benefit upon Tata.

To calculate the net subsidy rate, we divided the total amount of interest savings Tata obtained under this program during the POR by its total sales for the POR. Our calculation of the net subsidy rate is consistent with our approach in the underlying investigation. *See Preliminary Determination of HRC Investigation*, 66 FR at 20248 (unchanged in *Final Determination of HRC Investigation*). On this basis, we preliminarily determine the net countervailable subsidy to be 0.41 percent ad valorem for Tata.

8. Target Plus Scheme (TPS)

On September 1, 2004, the GOI introduced the TPS in the 2004 - 2009 edition of its ''Foreign Trade Policy'' handbook. Under TPS, exporting companies are eligible for duty credit entitlement certificates for the percentage of incremental growth in exports made during the 2004–2005 period, as compared to the 2003–2004 period.

Tata reported earning credits under the TPS prior to and during the POR. JSW reported that it used TPS credits earned prior to the POR to import various items during the POR. In its questionnaire response, JSW also reported that it did not apply for or earn TPS credits during the POR.

We preliminarily find this program to be similar to the DEPS program, which is countervailable, in that all exporters are eligible to earn value–based TPS credits on a post–export basis, and may use the credits for the purpose of paying customs duty on subsequent imports of any input, regardless of whether they are consumed in the production of an exported product.[23] Similar to the Department's approach under DEPS, we preliminarily determine that a financial contribution, in the form of revenue forgone, as defined under section 771(5)(D)(ii) of the Act, is provided under the TPS program because the GOI provides credits for the future payment of import duties. We also preliminarily find that the TPS program provides a benefit. The GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Therefore, in accordance with 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POR constitutes a benefit. Further, because the TPS program can only be used by exporters, we preliminary determine that the program is specific under section 771(5A)(B) of the Act.

We also preliminarily determine that the TPS credits provide a recurring benefit under 19 CFR 351.519(c). In keeping with our approach concerning value–based licenses like those provided under the DEPS, we calculated the benefit under the TPS on an ''as–earned'' basis because the amount of the exemption is known at the time the TPS license is earned. However, unlike the DEPS, TPS credits are not tied to particular sales. Rather, under the TPS,

[23] However, unlike DEPS licenses, TPS licenses are not transferable.

credits are provided as a percentage of the value of incremental growth in the exported merchandise. As such, participating firms do not know the value of TPS credits they have earned until they receive the TPS license. Therefore, for purposes of these preliminary results, we find that the date on which participating firms receive their TPS licenses constitutes the time period in which benefits are earned. Accordingly, for purposes of these preliminary results, we have not included TPS credits earned prior to the POR in our benefit calculations. Under this approach, we therefore preliminarily determine that JSW did not benefit from the TPS during the POR.

For purposes of calculating the benefit under the TPS for Tata, we summed all TPS credit earned by Tata during the POR. We then subtracted, as an allowable offset, the actual amount of any application fees paid for each license in accordance with section 771(6) of the Act.

As stated above, we preliminarily determine that TPS credits are contingent upon export activity, but unlike the DEPS, the credits are not tied to particular sales. Therefore, to calculate the net subsidy rate, we divided the amount of TPS credits earned during the POR by Tata's total export sales for the POR. On this basis, we preliminarily determine Tata's net countervailable subsidy rate under the program to be 1.80 percent *ad valorem*.

In its questionnaire response, JSW also stated that the TPS program was eliminated on April 1, 2006. The company provided a copy of a GOI document announcing the termination of the program.

We further note that 19 CFR 351.526(d) provides that the Department will not adjust the cash deposit rate if the program–wide change consists of a terminated program and: (1) the Department determines that residual benefits may continue to be bestowed under the terminated program, or (2) the Department determines that a substitute program for the terminated program has been introduced and the Department is not able to measure the amount of countervailable subsidies provided under the substitute program. However, in this review, the GOI has not provided the required information regarding residual benefits and successor programs, as discussed under 19 CFR 351.526(d).

Thus, because the GOI has not provided the required information regarding the termination of and any residual benefits from the program, or possible substitute programs, we cannot take a program–wide change into account in this administrative review. In any future countervailing duty proceedings involving merchandise from India and this program, the GOI will have with the opportunity to demonstrate whether a program–wide change has occurred with respect to the TPS under 19 CFR 351.526.

9. Captive Mining of Iron Ore

Under the Mines and Minerals Development and Regulation Act of 1957, as amended, (MMDR) and the Mineral Concession Rules of 1960, as amended, the GOI grants captive mining rights for minerals, including iron ore, to eligible applicants. The MMDR includes a schedule that lists minerals for which mining rights are controlled by the GOI. Iron ore is included on this schedule.

According to documents issued by the GOI, captive mining rights of iron ore are limited to a small group of companies. For example, according to a report issued by the GOI's Ministry of Steel, captive mining rights of iron ore are limited to a handful of steel and mining companies, including Tata. *See* The Report of the ''Export Group'' on Preferential Grant of Mining Leases for Iron Ore, Manganese Ore and Chrome Ore, as issued by the Ministry of Steel at page 50, which was included as Exhibit 3 of petitioner's May 23, 2007, submission. In addition, a study commission by the GOI further indicates that the GOI's provision of captive iron ore mining rights has been largely limited to large Indian steel producers. *See* National Mineral Policy, Report of the High Level Committee (a.k.a., the Hoda Report) at page 143, which was included as Exhibit 10 of petitioner's May 23, 2007, submission.

We preliminarily determine that the provision of iron ore under this program constitutes a financial contribution, in the form of a provision of a good, within the meaning of section (771)(D)(iii) of the Act. Furthermore, we preliminarily determine that the provision of iron ore under the Captive Mining Rights program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the provision of captive iron ore mining rights is limited to certain enterprises, such as steel producers.

Section 771(5)(E)(iv) of the Act provides that a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Pursuant to 19 CFR 351.511(a)(2)(i) the Department will normally seek to measure the adequacy of remuneration by comparing the government price for the goods or service to a market–determined price resulting from actual transactions in the country in question. The regulations provide that such market–determined prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions.

Tata reported that its sole source of iron ore during the POR was through the captive mining rights program. Thus, Tata was not able to provide a market–determined benchmark price resulting from actual transactions in the country in question, as described under 19 CFR 351.511(a)(2)(i).

Under 19 CFR 351.511(a)(2)(ii), if there is no useable market–determined price with which to make the comparison under sub–paragraph (a)(2)(i), the Department will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. This second tier directs the Department to examine prices which it would be reasonable to conclude that purchasers could obtain in India. There are publications on the record that include prices from the world market for comparable goods which can be used as a benchmark to determine whether the GOI sold high–grade iron ore to the respondents for less than adequate remuneration. As explained above in the ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration'' section of these preliminary results, copies of the *Tex Report*, which contain are on the record and include prices for high–grade iron ore that were set for 2006. Therefore, consistent with our approach in the *Final Results of Second HRC Review*, we continue to find that the prices reported in the *Tex Report* constitute world market prices that would be available to the respondents in accordance with 19 CFR 351.511(a)(2)(ii). See Final Results of Second HRC Review Decision Memorandum at ''Sale of High–Grade Iron Ore for Less Than Adequate Remuneration.''

To calculate the benefit, we first derived a per unit price for the iron ore that Tata extracted under the captive mining rights program. Specifically, we calculated a per unit price for the captive mining fees Tata paid to government entities during the POR. To this amount, we added the operational mining costs, on a per unit basis, which consisted of materials, labor, depreciation, overhead, and royalties. We then compared this total per unit cost to the per unit iron ore benchmark.

We made the following adjustments to the benchmark information. We converted the iron ore fines' prices listed in U.S. cents per dry long ton to U.S. dollars. We then multiplied the per unit U.S. dollar price by the corresponding percentage of iron content (iron ore is priced by one unit of Fe content) to calculate a U.S. dollar high–grade iron ore amount. Next, we converted the U.S. dollar per unit price from dry long tons to metric tons. We then applied the average exchange rate for 2006 to calculate a Rupee per metric ton price for high–grade iron ore. We then averaged the prices to arrive at the benchmark used to compare against Tata's per unit cost of iron ore. To calculate the benefit, we multiplied the difference between the government per unit price and the benchmark per unit price by the total amount of iron ore Tata mined from government sources under the program.

To calculate the net subsidy rate, we divided the benefit by Tata's total sales during the POR. On this basis, we calculated a net subsidy rate of 9.42 percent *ad valorem* for Tata.

In its November 1, 2007, supplemental questionnaire response, JSW stated that the GOI did not provide captive mining rights to the company. We issued supplemental questions regarding captive mining rights on November 8, 2007. JSW did not submit a response to that supplemental questionnaire. Because JSW did not provide any further information or supporting documentation to substantiate the company's non–use of captive mining rights, we are applying facts available with an adverse inference to address these omissions. Accordingly, we preliminarily find that the net subsidy rate for this program is 16.63 percent *ad valorem* for JSW.

10. Captive Mining Rights of Coal

In 1973, the GOI nationalized coal mining under the Coal Mines Nationalization Act. The legislation initially reserved coal mining for public companies. However, pursuant to the Coal Mines Nationalization Amendment Act of 1976, the law was revised to allow private iron and steel companies to mine for coal for captive use (*i.e.*, the right of selected companies to extract coal from government–owned land for use in their production processes). In 1993 through 1996, the GOI amended the Act to also allow power companies and the cement industry to mine coal for captive use.

Under the program, the GOI, in conjunction with local state governments, grants captive mining rights of coal in what is referred to as captive coal blocks. According to a document produced by the GOI's Ministry of Coal entitled, ''Guidelines for Allocation of Captive Blocks and Conditions of Allotment Through the Screening Committee,'' in granting captive coal blocks, preference shall be accorded to steel plants with annual capacities of more than one million metric tons. *See* Guidelines for Allocation of Captive Blocks and Conditions of Allotment Through the Screening Committee at Exhibit 23 of petitioner's May 23, 2007, submission.

In its questionnaire response, Tata acknowledged that the GOI and the State Government of Jharkhand (GOJ) granted it captive coal mining rights. Tata further acknowledged that during the POR it used such captive coal mining rights to extra coal from government–owned land located in West Bokaro and Jharia, in the state of Jharkhand.

We preliminarily determine that the provision of coal under this program constitutes a financial contribution, in the form of a provision of a good, within the meaning of section (771)(D)(iii) of the Act. Furthermore, we preliminarily determine that the provision of coal under the Captive Mining Rights program is *de jure* specific under section 771(5A)(D)(i) of the Act because preference is given in the allocation of coal blocks to steel producers whose annual production capacity exceeds one millions tons.

Section 771(5)(E)(iv) of the Act provides that a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Pursuant to 19 CFR 351.511(a)(2)(i) the Department will normally seek to measure the adequacy of remuneration by comparing the government price for the goods or service to a market–determined price resulting from actual transactions in the country in question. The regulations provide that such market–determined prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions.

Tata reported importing coal from a private supplier during the POR. There is no information on the record that suggests such private supplier prices do not reflect actual market–determined prices in India for comparable ore, or that such private–supplier prices have been distorted by GOI involvement in the market. Therefore, pursuant to section 19 CFR 351.511(a)(2)(i), we used such private prices as our benchmark for purposes of calculating the benefit from Tata's purchases of coal under the captive mining rights program.

To calculate the benefit, we first derived a per unit price for the coal that Tata extracted under the captive mining rights program. Specifically, we calculated a per unit price for the captive mining fees Tata paid to government entities during the POR. To this amount, we added the operational mining costs, on a per unit basis, which consisted of materials, labor, depreciation, overhead, and royalties. We then compared this total per unit cost to the per unit price that Tata paid for the coal it imported from commercial sources during the POR. To calculate the benefit, we multiplied the difference between the government per unit price and the imported per unit price by the total amount of coal Tata mined from government sources under the program.

To calculate the net subsidy rate, we divided the benefit by Tata's total sales during the POR. On this basis, we calculated a net subsidy rate of 12.01 percent ad valorem for Tata.

B. State Government of Gujarat Programs

1. State Government of Gujarat Tax Incentives

Pursuant to a 1995 Industrial Policy of Gujarat and an Incentive Policy of 1995–2000, the State Government of Gujarat (GOG) offered incentives, such as sales tax exemptions and deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. A company could be eligible to claim exemptions or deferrals valued up to 90 percent of the total eligible capital investment. These policies exempt companies from paying sales tax on the purchases of raw materials, consumable stores, packing materials and processing materials. Other available benefits include exemption or deferment from sales tax and turnover tax on the sale of intermediate products, by–products, and scrap. The Pioneer and Prestigious programs are the two programs that are available under this policy. To be eligible for the incentives, companies must have made a fixed capital investment of over 5 crores (Pioneer Scheme) or 300 crores (Prestigious Scheme) in a qualified under–developed area in the state of Gujarat. *See Preliminary Results of Second HRC Review*, 71 FR 1512, 1514; *see also* the Final Results of Second HRC Review Decision Memorandum at ''State Government of Gujarat (SGOG) Tax Incentives.''

The amount of the eligible capital investment is linked to the amount of the incentives received over a period of eight to 14 years, depending on the category of participation. For the Pioneer Scheme, which initially began in 1986, companies making a capital investment during 1986 and 1991 were allowed to utilize this program. For the Prestigious Scheme, tax incentives were offered only for investment units which started production between 1990 and 1995. *See Preliminary Results of Second HRC Review*, 71 FR at 1514 and Final Results of Second HRC Review Decision Memorandum at ''State Government of Gujarat (SGOG) Tax Incentives'' section. In the current review, Essar stated that it completed the 14-year sales tax exemption granted under the Pioneer Scheme on July 31, 2004, and, therefore, sales taxes offered under the program were not available to Essar during the POR. However, Essar indicated that it received sale tax exemptions under the Prestigious program from the beginning of the POR through March 31, 2006.

In the *Final Determination of PET Resin Investigation*, the Department determined that the sales tax exemptions under the Prestigious Scheme resulted in companies not paying the state sales tax otherwise due, and thus constituted a countervailable subsidy. *See Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India*, 70 DR 13460 (March 21, 2005) (*Final Determination of PET Resin Investigation*), and the ''State of Gujarat (SOG) Sales Tax Incentive Scheme'' section of the accompanying Issues and Decision Memorandum (Final Determination of PET Resin Investigation Decision Memorandum). Consistent with our findings in the *Final Determination of PET Resin Investigation*, we preliminarily determine that this program is countervailable. We preliminarily determine that the program is limited to only those companies that make an investment in a specified disadvantaged area and is therefore specific under section 771(5A)(D)(iv) of the Act. We also preliminarily find that the GOG provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and that Essar receives a benefit under section 771(5)(E) of the Act in the amount of sales tax that Essar does not pay.

In the case of an exemption of an indirect tax, the Department will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax. *See* 19 CFR 351.510(b)(1). We preliminarily determine that the date Essar otherwise would be required to pay the exempted sales taxes corresponds to the date of the annual state tax return Essar filed during the POR, which is the return covering the period April 1, 2005, through March 31, 2006. Therefore, to calculate the benefit under the Prestigious program we summed the amount of sales tax exemptions Essar received, as indicated by the annual state tax return Essar filed during the POR.

To calculate the net subsidy rate, we divided the benefit amount by Essar's total sales. On this basis, we preliminarily calculated an *ad valorem* rate of 1.08 percent for Essar.

In the course of explaining its use of the Pioneer and Prestigious Schemes, Essar stated that it also used a Value Added Tax (VAT) that the GOG established on April 1, 2006. According to Essar, the system remits VAT to eligible firms using the balance of tax incentives under the Prestigious Scheme that remained unutilized after the end of the 8- to 14-year time window allowed under the Prestigious Scheme.

The VAT remission system operates differently with respect to purchases and sales. For purchases within the State of Gujarat, eligible firms (*i.e.*, firms with existing balances under the Prestigious Scheme) must pay full tax to the vendor. However, the tax paid is credited to the company in the form of an input tax credit to be refunded by the State Government. The GOG then debits the refund received by the firm against the firm's remaining balance of tax credits leftover from the Prestigious Scheme.

With respect to sales, a company is required to charge sales tax from its customers (both local VAT and central sales tax). However, the tax collected by the seller does not have to be paid to the State of Gujarat, but instead can be retained through a remission order provided by the state's sales tax authorities. In such instances, the amount of sales tax retained by the firm is credited against the firm's remaining balance of tax credits leftover from the Prestigious Scheme.

Based on various aspects of the description of this system (*e.g.*, that the recipient may retain the local and central taxes that it has charged on sales of its products), it appears that this tax system is not structured as a conventional VAT. This is further confirmed by the manner in which eligibility for and the amounts of these remissions appear to be linked to the Prestigious Scheme. Because the source of the tax remissions received under the system comes from participating firms' unused tax credits under the Prestigious Scheme, we preliminary determine that these indirect tax remissions constitute a financial contribution, in the form of revenue forgone, under section 771(5)(D)(ii) of the Act and are regionally specific under section 771(5A)(D)(iv) of the Act. We further preliminarily determine that these indirect tax remissions confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.510(a)(1) because they enable participating firms to pay less indirect taxes than they would have to pay absent the system.

In its questionnaire response, Essar states that during the period April 1, 2006, through October 10, 2006, the remittances it obtained under this remission system exhausted the balance of tax credits earned under the Prestigious program. *See* pages 13 and 14 of Essar's November 8, 2007, supplemental questionnaire response, which indicates the balance of credits exhausted during the POR. Therefore, for purposes of the preliminary results, we are treating the balance of tax credits under the Prestigious Program that Essar used to obtain these remissions during the POR as the benefit.

To calculate the net subsidy rate, we divided the benefit amount by Essar's total sales. On this basis, we preliminarily calculated an *ad valorem* rate of 0.02 percent for Essar.

We will consider any additional information and comment that parties may want to provide concerning this remission system, and will reconsider our findings, as appropriate, for the final results.

C. State Government of Karnataka Programs

As explained above in the ''Adverse Facts Available'' section, *supra*, the SGOK failed to respond to the Department's new subsidy questionnaire regarding alleged subsidy programs pertaining to JSW and VMPL. Accordingly, pursuant to section 776(b) of the Act, we find that all newly alleged subsidy programs determined to be used by JSW and VMPL, as listed below, constitute financial contributions and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

1. SGOK's New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)

JSW reported that it received assistance from the SGOK under the 1993 KIP to construct an integrated steel plant in the state of Karnataka. JSW stated that eligibility for the subsidies

was limited to industries located within designated regions of Karnataka. As discussed in ''Adverse Facts Available'' section, *supra*, JSW failed to submit complete information to the Department concerning the full extent of assistance the company received from the SGOK under the 1993 KIP. In its November 1, 2007, response, JSW submitted a copy of the SGOK's November 10, 1994, order that sanctioned infrastructure assistance, incentives, and concessions for JSW's steel plant. This government document outlines various types of assistance for the project including land, power, water, roads, iron ore, coal, limestone/dolomite, port facilities, training facilities, term loans, an interest free unsecured loan, and tax incentives. On November 8, 2007, we issued to JSW a supplemental questionnaire requesting information on the various types of assistance outlined in the SGOK's approval document. JSW failed to submit a response to that questionnaire.

In its questionnaire responses, JSW, however, did submit limited information on the VAT refunds it received during the POR for domestic sales made in the state of Karnataka. JSW also provided some limited information regarding the amount of tax incentives the company was eligible to receive under the 1993 KIP incentives package from the SGOK in its new subsidies questionnaire response, which was submitted to the Department on November 1, 2007.

JSW's failure, however, to provide complete information requested by the Department has impeded our investigation of the new subsidies allegations. JSW also has not provided us with any explanation as to why it could not provide the information within the established deadlines. Therefore, we preliminarily determine that JSW has failed to act to the best of its ability and, in accordance with section 776(b) of the Act, we are applying facts available with an adverse inference to address these omissions for each type of assistance approved by the SGOK, with the exception of the VAT refunds and tax incentives (see discussion below for these two assistance programs). As such and as explained above in the ''Adverse Facts Available'' section of these preliminary results, we are assigning to each of the following sub–programs the AFA rate of 16.63 percent *ad valorem*: land, power, water, roads, iron ore, coal, limestone/dolomite, port facilities, training facilities, term loans, and an interest free unsecured loan. Treatment of each type of assistance as a ''sub–program'' (*i.e.*, as a distinct program) is consistent with the Department's approach in other countervailing duty cases. *See*, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination*, 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum at ''General Incentives Encouragement Program (GIEP),'' under ''Programs Determined To Be Countervailable,'' where the Department treated each type of assistance under the GIEP as a separate sub–program.

Concerning tax programs, JSW reported that it received VAT refunds from the SGOK during the POR for domestic sales. JSW reported that the VAT refunds are only for companies that set up productive units in the backward area of Karnataka and are only permitted for products sold domestically within Karnataka. *See* JSW's November 19, 2007, Supplemental Questionnaire Response at 19 and 22.

We preliminarily find that, consistent with 19 CFR 351.510(a)(1), the benefit to JSW is the total amount of VAT refunds that the company received for the POR. JSW provided to the Department the VAT refunds the company received in 2006 in its November 19, 2007, supplemental questionnaire response at Table C. We then divided that amount by JSW's total sales for 2006. On this basis, we preliminary determine for the VAT refund sub–program a rate of 0.83 percent *ad valorem* for JSW.

In its November 1, 2007, questionnaire response, JSW also stated that it received tax incentives and that the company's tax incentives are limited to the capital investment in the fixed assets of the project. JSW reported a monetary amount for the fixed assets investment. JSW, however, did not explain the extent of tax assistance the company received from the SGOK or whether the ''capped'' tax incentives were part of or separate from the VAT refunds that the company received during the POR. Therefore, as AFA, we preliminarily find that in addition to the VAT refunds, JSW received other tax incentives during the POR. To calculate the benefit to JSW from these other tax incentives, we first divided the total fixed asset investment amount by the number of years that JSW can receive tax incentives. We then divided the amount apportioned to 2006 by JSW's total sales for 2006. On this basis, we preliminary determine for the tax incentives sub–program a rate of 3.99 percent *ad valorem* for JSW.

In the November 8, 2007, supplemental questionnaire covering the new subsidies, we asked VMPL, an iron ore supplier that is majority owned by JSW, to respond to the questions regarding its receipt of assistance under the 1993 KIP. VMPL is a joint venture between JSW and MML to supply iron ore to JSW's integrated steel plant. As reported in JSW's financial statement, VMPL meets nearly 50 percent of JSW's iron ore requirements and ''is pursuing with the Government of Karnataka for allocation of additional mining areas to meet the entire iron ore requirements of your company.''[24] (*See* ''Other SGOK Subsidies'' below for more information on VMPL.) VMPL did not submit a response to the questionnaire. Therefore, pursuant to section 776(b) of the Act, we preliminarily determine that VMPL has failed to act to the best of its ability and are applying facts available with an adverse inference to address these omissions for each type of assistance provided by the SGOK as outlined in JSW's November 10, 1994, approval order.

Under section 776(b) of the Act and 19 CFR 351.525(b)(6)(vi), we preliminarily determine that cross–ownership exists between JSW and VMPL based on the nature and extent of the ownership relationship between the two. Further, consistent with information on the record regarding the nature and extent of the supplier relationship between VMPL and JSW, pursuant to section 776(b) of the Act and 19 CFR 351.525(b)(6)(iv), we preliminarily determine that subsidies received by VMPL are attributable to the combined sales of VMPL and JSW.

Therefore, in order to account for VMPL's failure to respond to the Department's questionnaire, pursuant to section 776(b) of the Act, we are assigning to JSW: (1) the AFA rate of 16.63 percent *ad valorem* for the following sub–programs: land, power, water, roads, iron ore, coal, limestone/dolomite, port facilities, training facilities, term loans, and an interest free unsecured loan; (2) the calculated rate of 0.83 percent *ad valorem* for the VAT refund sub–program; and (3) the calculated rate of 3.99 percent *ad valorem* for the tax incentives sub–program.[25]

2. Other SGOK Subsidies

Petitioner alleged that JSW received subsidies from the SGOK by virtue of JSW's ownership in VMPL, which is also partially owned by MML, a SGOK–

[24] *See* JSW's 2004-2005 financial statement at page 15, which was submitted by petitioner in its May 23, 2007, new subsidies allegation submission (a public document on the public file in the CRU).

[25] Because VMPL did not submit a questionnaire response, we do not have the company's sales data for 2006 to combine with JSW's sales. Therefore, as AFA, we are using only JSW's total sales as the denominator to calculate the rate for the VAT refunds and tax incentives sub-programs.

owned company. Specifically, petitioner alleged that (1) MML has not received shares in VMPL in return for MML turning over mining sites to VMPL; (2) MML has failed to recover pension payments, premium payments, and mineral premiums from VMPL, and (3) MML has failed to enforce certain pricing agreements it has with VMPL that have resulted in MML paying higher prices for iron ore.

In its November 1, 2007, questionnaire response, JSW reported that it owns 70 percent of VMPL and MML owns the remaining 30 percent. Concerning petitioner's allegations, JSW stated that MML received its shares in VMPL and payment against the balance of premiums owed by VMPL. JSW stated that the Department's questions regarding failure of MML to enforce pricing arrangements were not applicable.

In the November 8, 2007, supplemental questionnaire, we asked JSW to submit documentation to substantiate its statements that MML received shares in VMPL and received all payments due from VMPL. We also instructed VMPL to submit a questionnaire response covering the SGOK's incentives and concessions packages (see discussion, *infra*). JSW did not submit a response to the November 8, 2007, supplemental questionnaire, nor did VMPL respond to its questionnaire. JSW's failure to provide complete information requested by the Department has impeded our investigation of the new subsidies allegations. JSW also has not provided us with any explanation as to why it could not provide the information within the established deadlines. Therefore, because we preliminarily determine that JSW has failed to act to the best of its ability, pursuant to section 776(b) of the Act, and find that subsidies to VMPL are attributable to JSW, we are applying facts available with an adverse inference to address these omissions. As such, we are assigning to each of the following sub–programs the AFA rate of 16.63 percent *ad valorem*: (1) MML's receipt of VMPL shares, (2) MML's receipt of premium payments from VMPL, and (3) MML's Failure to Enforce Pricing Arrangements.

3. SGOK's New Industrial Policy and Package of Incentives and Concessions of 1996

VMPL did not submit a response to the November 8, 2007, new subsidies supplemental questionnaire covering its use of the SGOK's 1996 incentives and concessions package. Therefore, we preliminarily determine that VMPL/JSW has failed to act to the best of its ability and, pursuant to section 776(b) of the Act, we are applying facts available with an adverse inference to address this failure to respond. Therefore, we are assigning to this program the AFA rate of 16.63 percent *ad valorem*.

4. SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001

VMPL did not submit a response to the November 8, 2007, new subsidies supplemental questionnaire covering its use of the SGOK's 2001 incentives and concessions package. Therefore, we preliminarily determine that VMPL/JSW has failed to act to the best of its ability and, pursuant to section 776(b) of the Act, we are applying facts available with an adverse inference to address this failure to respond. Therefore, we are assigning to this program the AFA rate of 16.63 percent *ad valorem*.

5. SGOK's New Industrial Policy and Package of Incentives and Concessions of 2006

VMPL did not submit a response to the November 8, 2007, new subsidies supplemental questionnaire covering its use of the SGOK's 2006 incentives and concessions package. Therefore, we preliminarily determine that VMPL/JSW has failed to act to the best of its ability and, pursuant to section 776(b) of the Act, we are applying facts available with an adverse inference to address this failure to respond. Therefore, we are assigning to this program the AFA rate of 16.63 percent *ad valorem*.

D. State Government of Maharashstra Programs

1. Sales Tax Program

Under the Maharastra Package Scheme of Incentives and the Maharastra New Package Scheme of Incentives, the Government of Maharastra (GOM) offered tax incentives - including sales tax exemptions, sales tax deferrals, VAT tax refunds, and interest–free unsecured loans - to companies that located or invested in certain developing areas in the State of Maharastra.

Ispat reported that, through the Maharastra Package Scheme of Incentives of 1983 and the Maharastra Package Scheme of Incentive of 1988, Ispat was permitted to retain as an interest–free loan an amount equal to the amount of sales taxes incurred by its Kalmeshwar Complex that was otherwise payable to the GOM. For its Dolvi Plant, under the Maharashstra New Package Scheme of Incentives of 1993 Ispat was entitled to receive an exemption of sales taxes payable on raw material purchases, but, with GOM's introduction of a VAT system on April 1, 2005, the exemption of sales taxes on purchases was no longer available. Ispat reported that, with regard to the Dolvi division, Ispat is eligible for an exemption of sales taxes on sales and that it is also entitled to VAT refunds. Ispat stated that, with regard to the Dolvi division, Ispat has been eligible for remission of sales taxes since August 6, 1998, and will remain eligible until August 5, 2012. Finally, Ispat reported that deferral of sales tax on purchases is not available under the program, but deferral of sales tax on sales is available. Ispat stated that, as of May 1, 2006, the company shifted from claiming sales tax exemptions to claiming sales tax deferrals. Ispat stated that, instead of immediately paying the GOM the sales taxes it collects, the company retains the sales taxes it collects on behalf of the GOM for ten years before being required to submit the deferred sales taxes to the GOM in equal installments over five years.

In the *Final Determination of PET Resin Investigation*, the Department determined that the purchases under the Prestigious Scheme resulted in companies not paying the state sales tax otherwise due, and that the program provided a countervailable subsidy. *See* the ''State of Gujarat (SOG) Sales Tax Incentive Scheme'' section of the Final Determination of PET Resin Investigation Decision Memorandum. Consistent with our findings in the *Final Determination of PET Resin*, we preliminarily determine that this program is countervailable. We preliminarily determine that the Maharstra Package Scheme of Incentives program is limited to only those companies that make an investment in a specified developing area and therefore, it is specific under section 771(5A)(D)(iv) of the Act. We also preliminarily determine that the GOM provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and, in the case of sales tax deferrals, in the form of uncollected interest on the deferred sales taxes. *See* 19 CFR 351.510(a)(2). We preliminarily determine that Ispat receives a benefit under section 771(5)(E) of the Act: (1) in the amount of sales tax that it does not pay; (2) in the case of sales tax deferrals, in the amount of interest otherwise due; and (3) in the case of sales tax loans, in the form of interest–free loans.

In the case of an exemption of an indirect tax, the Department considers the benefit as being received at the time the recipient firm otherwise would be required to pay the indirect tax. *See* 19

CFR 351.510(b)(1). We preliminarily determine that the date that Ispat otherwise would be required to pay the exempted taxes corresponds to the date of the annual state tax return Ispat filed during the POR. Because Ispat has not provided a copy of its state tax return filed in the POR, we are unable to calculate the benefit for sales tax exemptions that may have been claimed by Ispat during the POR. Prior to issuing the final results, we intend to collect a copy of Ispat's state tax return and additional information regarding Ispat's sales tax exemptions.

Ispat provided a breakdown of its VAT refunds pertaining to the period April 2005 to the end of the POR. Because Ispat did not provide detailed information as to when it applied for and received these refunds, we calculated the benefit by summing all of the VAT refunds Ispat reported having received during the POR. Prior to issuing the final results, we intend to collect additional information regarding these VAT refunds.

Regarding Ispat's deferrals of indirect taxes, a benefit exists to the extent that the appropriate interest charges are not collected. *See* 19 CFR 351.510(2)(a)(2). Ispat provided a monthly breakdown of its sales tax deferrals. Using these data, we calculated the monthly benefit by multiplying the monthly amount of deferred tax by the days outstanding in the POR by the benchmark interest rate. We used the long term 2006 benchmark interest rate because Ispat is not required to repay these deferral sales tax amounts for 10 to 15 years.

Regarding interest free sales tax loans, Schedule 4 of Ispat's Annual Report contains an entry for the amount of interest–free sales tax loans outstanding as of March 31, 2006. Because Ispat did not provide more specific data, we calculated the benefit by treating this amount as the amount of interest–free tax loan outstanding at the beginning of 2006 and multiplying it by the benchmark interest rate. As explained in the ''Subsidies Valuation Section'' above, because Ispat did not have comparable, commercial loans for 2006, we used the average interest rate in 2006 for India's PLR, as reported by the RBI. We used a long–term benchmark interest rate because Ispat reported that is not required to repay the unsecured sales tax loans for 10 to 15 years.

Ispat claims that the provision in the Maharastra Package Scheme of Incentives which allows for exemptions of sales taxes on purchases was terminated on March 31, 2005, and that a substitute program has not been instituted. On this basis, Ispat requests that the Department take a program–wide change into consideration when establishing the cash deposit rate applicable to the Maharastra Package Scheme of Incentives. We note that 19 CFR 351.526(d) provides that the Department will not adjust the cash deposit rate if the program–wide change consists of a terminated program and: (1) the Department determines that residual benefits may continue to be bestowed under the terminated program, or (2) the Department determines that a substitute program for the terminated program has been introduced and the Department is not able to measure the amount of countervailable subsidies provided under the substitute program. In this review, the GOM has not provided the required information regarding residual benefits and successor programs, as discussed under 19 CFR 351.526(d).

To calculate the net subsidy rate for this program, we summed the various benefit amounts received by Ispat under each provision of the program and divided the total benefit amount for the POR by Ispat's total sales during the POR. On this basis, we preliminarily calculate an *ad valorem* program rate of 1.25 percent for Ispat.

2. Electricity Duty Exemption under the Package Scheme of Incentives for 1993

Ispat reported that, under the Package Scheme of Incentives for 1993, the GOM provides exemptions of electricity duties for ''Mega'' projects located in specified developing regions of the state. Ispat reported that, because Ispat's Dolvi plant qualified as a Mega project, Ispat holds eligibility certificates under the Maharastra New Package Scheme of Incentives of 1993. Under this program, Ispat received electricity duty exemptions on several of the types of electricity charges by the Maharastra State Electricity Distribution Co. Ltd.

We preliminarily determine that the Maharstra Package Scheme of Incentives program is limited to only those companies that make an investment in a specified developing area and therefore, it is specific under section 771(5A)(D)(iv) of the Act. We also preliminarily determine that the GOM provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of electricity duty revenue. We preliminarily determine that Ispat receives a benefit under section 771(5)(E) of the Act in the amount of electricity duties that it does not pay.

To calculate the benefit received by Ispat during the POR under this program, we summed the monthly value of electricity charges that were eligible for the duty exemption and multiplied these totals by the ''industrial'' electricity duty rate of 6 percent. We then divided this result by the company's total sales during the POR. On this basis, we preliminarily calculate an *ad valorem* program rate of 0.59 percent for Ispat.

II. Program Preliminary Found Not To Provide Countervailable Benefits in the POR

Duty Free Replenishment Certificate (DFRC) Scheme

The DFRC scheme was introduced by the GOI in 2001 and is administered by the DGFT. The DFRC is a duty replenishment scheme that is available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. In order to receive a license, which entitles the recipient subsequently to import duty free certain inputs used in the production of the exported product, as identified in a SION, within the following 24 months, a company must: (1) export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license.

Although 19 CFR 351.519(b)(2) provides that the Secretary will normally consider any benefit from a duty drawback or exemption program as having been received as of the date of exportation, we preliminary find that an exception to this normal practice is warranted here in view of the unique manner in which this program operates. Specifically, a company may not submit an application for a DFRC license until the proceeds of the sale are realized. The license, once granted, specifies the quantity of the particular inputs that the bearer may subsequently import duty free. In the *Final Results of First HRC Review*, we noted that the benefits from another duty exemption program, the DEPS, were conferred as of the date of exportation of the shipment because it is at that point that ''the amount of the benefit is known by the exporter.'' *See* Final Results of First HRC Review Decision Memorandum at II.A.4 ''Duty Entitlement Passbook Scheme.'' However, in the case of the DFRC, the company does not know at the time of

export the value of the duty exemption that it will ultimately receive. It only knows the quantity of the inputs it will likely be able to import duty free if its application for a DFRC license is granted. Unlike the DEPS, under the DFRC, the respondent will only know the total value of the duty exemption when it subsequently uses that license to import the specified products duty free or sells it. Therefore, we preliminarily determine that the date of receipt is linked to when the company uses the certificate to import an input duty free or, in the case in which the company sells the certificate, the date of sale. This approach is consistent with the Department's approach to other similar types of programs in India. *See*, *e.g.*, the ''Duty Entitlement Passbook Scheme (DEPS),'' section of the Final Determination of Lined Paper Investigation Decision Memorandum.

During the POR, no companies reported importing using a DFRC license or exporting against a DFRC license. However, Tata reported selling DFRC licenses during the POR. The Department has previously determined that the sale of quantity–based import licenses confers a countervailable export subsidy. *See*, *e.g.*, *Final Determination of CTL Plate Investigation*, 64 FR 73131, 73134; *Certain Iron–Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 63 FR 64050 (Nov. 18, 1998); and *Certain Iron–Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 62 FR 32297, 32298 (June 13, 1997), in which the Department found the sale of quantity–based licenses under the ALP countervailable. Therefore, in accordance with section 771(5A)(B) of the Act, we determine that the sale of DFRC licenses is an export subsidy and that a financial contribution is provided, under section 771 5(D)(ii) of the Act, in the form of the revenue foregone. We further find that the sales of the licenses conferred a benefit under section 771 (5)(E) of the Act.

However, Tata further reported that all of the DFRC licenses sold during the POR were tied to non–subject merchandise. Because the receipt of DFRC licenses are tied to specific export sales, Tata's indication in its questionnaire response that its sales of DFRC licenses during the POR are tied to non–subject merchandise is plausible. Therefore, for purposes of these preliminary results, we find that Tata's use of this program was tied to non–subject merchandise.

III. Program for Which More Information is Required

Status Certificate Program

India's Status Certificate Program is detailed under paragraph 3.5 of its Foreign Trade Policy Handbook. This program details the following privileges provided to exporters, depending on their export performance for the current year, plus the preceding three years:

i). License/certificate/permissions and Customs clearances for both imports and exports on self–declaration basis;

ii). Fixation of Input–Output norms on priority within 60 days;

iii). Exemption from compulsory negotiation of documents through banks. The remittance, however, would continue to be received through banking channels;

iv). 100 percent retention of foreign exchange in EEFC account;

v). Enhancement in normal repatriation period from 180 days to 360 days;

vi). Entitlement for consideration under the Target Plus Scheme; and

vii). Exemption from furnishing of Bank Guarantee in Schemes under this Policy.

Tata and JSW indicated that they did not use the Status Certificate program during the POR. However, Ispat and Essar indicated that they participated in the program. On December 7, 2007, the Department requested additional information from Ispat and Essar regarding their use of the program. In particular, we inquired the extent to which Ispat and Essar used the provision related to foreign currency retention under the Status Certificate program during the POR. In Essar's December 12, 2007, questionnaire response, it stated that it did not use the currency retention program. In its December 13, 2007, questionnaire response, Ispat indicated that it used the program to extend the repatriation period of its foreign currency earnings beyond 180 days.

At this time, we do not have sufficient information from parties to determine whether this extension of the time period to repatriate foreign currency earnings under the Status Certificate Program is a countervailable subsidy. We intend to seek further information and issue an interim analysis describing our preliminary findings with respect to this program before the final results of review so that parties will have to opportunity to comment on our findings.

VI. Programs Preliminarily Determined Not To Be Used

A. GOI Programs

1. Export Processing Zones and Export Oriented Units
2. Export Processing Zones
3. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC)
4. Market Development Assistance
5. Market Access Initiative
6. Exemption of Export Credit from Interest Taxes
7. Long–Term Loans from the GOI
8. Special Economic Zone Act of 2005

a. Duty free import/domestic procurement of goods and service for development, operation, and maintenance of SEZ units.
b. Exemption from excise duties on goods (*i.e.*, machinery and capital goods) ''brought from the Domestic Tariff Area'' (defined as the ''whole of India'' excluding SEZs) for use by an enterprise in the SEZ.
c. Drawback on goods brought or services provided from the Domestic Tariff Area into a SEZ, or services provided in a SEZ by service providers located outside India.
d. 100 percent exemption from income taxes on export income from the first 5 years of operation, 50 percent for the next 5 years, and a further 50 percent exemption on export income reinvested in India for an additional 5 years.
e. Exemption from the Central Sales Tax.
f. Exemption from the national Service Tax.

B. State Government of Andhra Pradesh Programs- Grants Under the Industrial Investment Promotion Policy of 2005–2010

1. 25 percent reimbursement of cost of land in industrial estates and industrial development areas.
2. Reimbursement of power at the rate of Rs. 0.75 ''per unit'' for the period beginning April 1, 2005, through March 31, 2006 and for the four years thereafter to be determined by the Government of Andhra Pradesh (GOAP).
3. 50 percent subsidy for expenses incurred for quality certification up to RS. 100 lakhs.
4. 25 percent subsidy on ''cleaner production measures'' up to Rs. 5 lakhs.
5. 50 percent subsidy on expenses incurred in patent registration, up to Rs. 5 lakhs.
6. 100 percent reimbursement of stamp duty and transfer duty paid for the purchase of land and

buildings and the obtaining of financial deeds and mortgages.
7. A grant of 25 percent of the tax paid to GAAP, which is applied as a credit against the tax owed the following year, for a period of five years form the date of commencement of production.
8. Exemption form the GAAP Non–agricultural Land Assessment (NALA).
9. Provision of ''infrastructure'' for industries located more than 10 kilometers from existing industrial estates or industrial development areas.
10. Guaranteed ''stable prices of municipal water for 3 years for industrial use'' and reservation of 10% of water for industrial use for existing and future projects.

C. State Government of Chhattusgarh Programs- Industrial Policy 2004–2009

1. A direct subsidy of 35 percent to total capital cost for the project, up to a maximum amount equivalent to the amount of commercial tax/central sales tax paid in a seven year period.
2. A direct subsidy of 40 percent toward total interest paid for a period of 5 years (up to Rs. Lakh per year) on loans and working capital for upgrades in technology.
3. Reimbursement of 50 percent of expenses (up to Rs. 75,000) incurred for quality certification.
4. Reimbursement of 50 percent of expenses (up to 5 lakh) for obtaining patents.
5. Total exemption from electricity duties for a period of 15 years form the date of commencement of commercial production.
6. Exemption from stamp duty on deeds executed for purchase or lease of land and buildings and deeds relating to loans and advances to be taken by the company for a period of three years from the date of registration.
7. Exemption from payment of ''entry tax'' for 7 years (excluding minerals obtained from mining in the state).
8. 50 percent reduction of the service charges for acquisition of private land by Chhattisgarh Industrial Development Corporation for use by the company.
9. Allotment of land in industrial areas at a discount up to 100 percent.

D. State Government of Gujarat Programs

1. Gujarat Special Economic Zone (SEZ) Act
a. Stamp duty and registration fees for land transfers, loan agreements, credit deeds, and mortgages.
b. Sales tax, purchase tax, and other taxes payable on sales and transactions.
c. Sales and other state taxes on purchases of inputs (both goods and services) for the SEZ or a Unit within the SEZ.
2. Captive Port Facilities
a. Discount on Gujarat wharfage charges.
b. Credit for the cost of the capital (including interest) to construct the port facilities, which is then applied as an offset to the wharfage charges due Gujarat on cargo shipped through the captive jetty.

E. State Government of Jharkhand Programs

1. Grants and Tax Exemptions under the State Industrial Policy of 2001
2. Subsidies for Mega Projects under the JSIP of 2001

F. State Government of Maharashstra Programs

1. Refunds of Octroi Under the PSI of 1993, Maharastra Industrial Policy of 2001, and Maharastra Industrial Policy of 2006.
2. Infrastructure Assistance for Mega Projects.
3. Land for Less than Adequate Remuneration.
4. Loan Guarantees Based on Octroi Refunds by the SGM.
5. Investment Subsidy.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for each reviewed company for the period January 1, 2006, through December 31, 2006. These rates are summarized in the table below:

Company	Total Net Countervailable Subsidy Rate
Essar Steel Ltd.	12.87 percent *ad valorem*
Ispat Industries Ltd.	13.42 percent *ad valorem*
JSW Steel Ltd.	505.20 percent *ad valorem*
Tata Steel Ltd.	29.21 percent *ad valorem*

If the final results of this review remain the same as these preliminary results, the Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of review. We will instruct CBP to collect cash deposits for each respondent at the countervailing duty rate indicated above of the f.o.b. invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We will also instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company.

These deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. The Department will notify interest parties of the briefing schedule after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department, pursuant to 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. *See* 19 CFR 351.305(b)(3). The Department will publish the final results of this

administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 31, 2007.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–179 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: January 9, 2008.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 2007, the Department published a notice of initiation of administrative review of the countervailing duty order on Stainless Steel Plate in Coils from Belgium, covering the period January 1, 2006, through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007).

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limits for Preliminary Results

This administrative review is extraordinarily complicated due to the nature of the countervailable subsidy practices and the fact that we have not conducted an administrative review of the countervailing duty order on stainless steel plate in coils from Belgium since 2001. Because the Department requires additional time to review, analyze, and possibly verify the information, and to issue supplemental questionnaires, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by January 31, 2008). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than May 30, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–180 Filed 1–8–08; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; High Seas Fishing Permit Application Information

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Dickinson, (301) 713–2276 or *Bob.Dickinson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone) are required to possess a permit issued under the High Seas Fishing Compliance Act. Applicants must submit information to identify their vessels and intended fishing areas. The application information is used to process applications and to maintain a register of vessels authorized to fish on the high seas.

II. Method of Collection

Paper forms must be mailed to NOAA.

III. Data

OMB Control Number: 0648–0304.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 200.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost to Public: $10,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–166 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; High Seas Fishing Vessel Reporting Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Dickinson, (301) 713–2276 or *Bob.Dickinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Operators of vessels licensed under the High Seas Fishing Compliance Act are required to report their catch and fishing effort when fishing on the high seas. The requirement is for fishery management purposes and to provide data to international organizations. Vessels already maintaining logbooks under other specific regulations are not required to maintain an additional logbook.

II. Method of Collection

Paper logbook pages are submitted.

III. Data

OMB Control Number: 0648–0349.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 550.
Estimated Time per Response: 6 minutes per day for days fish are caught; 1 minute per day for days when fish are not caught.
Estimated Total Annual Burden Hours: 850.
Estimated Total Annual Cost to Public: $3,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–167 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; High Seas Fishing Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Dickinson, (301) 713–2276 or *Bob.Dickinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The operators of vessels licensed under the High Seas Fishing Compliance Act are required to mark their vessels in 3 locations (port and starboard sides of the deckhouse or hull, and on a weatherdeck) with their official number or radio call sign. The requirement is for enforcement purposes.

II. Method of Collection

No information is submitted, only displayed on the vessel.

III. Data

OMB Control Number: 0648–0348.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 45 minutes (15 minutes for each of 3 locations).
Estimated Total Annual Burden Hours: 38.
Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–168 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Foreign Fishing Vessel and Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Dickinson, (301) 713–9090 or *Bob.Dickinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 600.503 require that a foreign fishing vessel display the vessel's international radio call sign on the port and starboard sides of the deckhouse or hull, and on a weatherdeck. The numbers must be of a specific size. The display of the identifying number aids in fishery law enforcement and allows other fishermen to report suspicious activity.

The regulations also require that foreign fishing vessels that deploy gear that is not physically and continuously attached to the vessel mark that gear with a buoy displaying the vessel identification number and attach a light visible for two miles on a night with good visibility. The marking of gear aids law enforcement and enables other fishermen to report on gear placed in unauthorized areas.

There currently are no foreign vessels authorized to do fishing that would be subject to the gear identification requirement.

II. Method of Collection

Information is displayed on vessels and gear.

III. Data

OMB Control Number: 0648–0356.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 6.
Estimated Time Per Response: 45 minutes per vessel.
Estimated Total Annual Burden Hours: 5.
Estimated Total Annual Cost to Public: $120.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–169 Filed 1–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Education Benefits Board of Actuaries (hereafter referred to as the Board).

The Board, pursuant to 10 U.S.C. 2006(e), is a non-discretionary Federal advisory committee established to: (1) Annually advise the Secretary of Defense on the actuarial status of the Department of Defense Education Benefits Fund (hereafter referred to as the Fund); (2) shall furnish its advice and opinion on matters referred to it by the Secretary; review valuations of the Fund conducted under the provisions of 10 U.S.C., § 2006(f); (3) report to the Secretary of Defense annually on the actuarial status of the Fund; and (4) recommend to the President and Congress such changes as, in the Board's judgment, are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

The Board shall be composed of not more than three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. The members shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. A member may serve after the end of the term until a successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

Members may not be reappointed for successive terms. The Chairperson of the Board shall be designated by the Under Secretary of Defense (Personnel and Readiness), on behalf of the Secretary of Defense, for a five-year term.

Board Members appointed by the Secretary of Defense, who are not Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109, and shall, under the authority of 10 U.S.C. 2006(e)(1)(C), serve with compensation, to include travel and per diem for official travel.

The Board shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson, the Secretary of Defense or the Under Secretary of Defense (Personnel & Readiness). The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or Alternate Designated Federal

Officer shall attend all Board meetings and subcommittee meetings.

The Board is authorized to establish subcommittees and workgroups, as necessary and consistent with its mission. Board subcommittees and workgroups shall operate under the provisions of Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate Federal regulations.

Board subcommittees and workgroups shall not work independently of the Board and shall report all their recommendations and advice to the Board for full deliberation and discussion. Board subcommittees and workgroups have no authority to make decisions on behalf of the Board and may not report directly to the Department of Defense or any Federal officers or employees who are not members of the Board.

Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the members of the Board. Written statements may be submitted at any time to the Board's Designated Federal Officer or in response to the stated agenda of a planned meeting.

The contact information for the Designated Federal Officer for the Department of Defense Education Benefits Board of Actuaries can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp*.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554.

Dated: January 3, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–207 Filed 1–8–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Kilo Wharf Extension (MILCON P–502) at Apra Harbor Naval Complex, Guam, Mariana Islands

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy announces its decision to extend Kilo Wharf by 400 feet (122 meters) to the west at Apra Harbor Naval Complex, Guam, Mariana Islands. The project includes dredging of reef flat and other marine habitats, construction of an additional mooring island, and improvements to the existing wharf. Improvements to the existing wharf include upgrades to the primary and secondary electrical power supply; upgraded lightning protection and grounding system; new electrical substation building, perimeter fencing, and floodlighting system; and seismic upgrades.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Macariola-See, Naval Facilities Engineering Command Pacific (Code EV2 NM), 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone 808–472–1402.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c), and the regulations of the Council on Environmental Quality that implement NEPA procedures (40 Code of Federal Regulations Parts 1500–1508), the Department of the Navy (Navy) announces its decision to extend Kilo Wharf by 400 feet (ft) (122 meters [m]) to the west at Apra Harbor Naval Complex (AHNC), Guam, Mariana Islands. The proposed wharf extension will be accomplished as set out in the West Extension Alternative, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative.

Kilo Wharf is located within the AHNC in Outer Apra Harbor, and is the Department of Defense's (DoD's) only dedicated ammunition wharf in the Western Pacific Region. The Navy proposes to extend Kilo Wharf to provide adequate berthing facilities (including shore utilities and wharf-side handling area) to support a new class of ammunition ship that will replace existing ammunition ships currently forward deployed to the AHNC. The DoD is developing a new class of multi-purpose dry cargo/ammunition ship (designated as ''T-AKE''), scheduled to be in service in Guam in fiscal year 2010.

The purpose of the Proposed Action is to ensure that Commander, Navy Region Marianas (COMNAVREGMARIANAS) continues to provide ammunition on and off loading capability in direct support of DoD strategic forward power projection and maintain the readiness of the Navy's operating forces in the Western Pacific region. COMNAVREGMARIANAS provides operational, fuel re-supply, ordnance, and other logistic support to Fleet units of the Pacific Region and operating forces of the Navy's Fifth and Seventh Fleets. The Proposed Action will enable COMNAVREGMARIANAS to provide adequate facilities for the new T-AKE vessels forward deployed to Guam in accordance with DoD technical design standards for safe and efficient ordnance loading/offloading, in order to maintain its current support mission. The need for the Proposed Action is to ensure Kilo Wharf meets *Facility Planning Criteria for Navy and Marine Corps Shore Installations (P–80)* and *Military Handbook 1025/1*, *Piers and Wharves* criteria for berthing the T-AKE. There are no other suitable facilities on Guam available to accommodate this class of ammunition ship.

Public Involvement: Public involvement is discussed in Section 1.6 of the FEIS and summarized here. A Notice of Intent to prepare an EIS for the Proposed Action was published in the **Federal Register** (Vol. 70, No. 145, Page 43848) on 29 July 2005. Two public scoping meetings were held on Guam 30 August 2005 and 2 September 2005. The Draft Environmental Impact Statement (DEIS) was filed with the U.S. Environmental Protection Agency (USEPA) on 2 March 2007. A Notice of Availability of the DEIS was published in the **Federal Register** on 9 March 2007 (Vol. 72, No. 46, Page 10749), initiating a 45-day public comment period which ended on 23 April 2007.

A Notice of Public Hearing for the DEIS was published in the **Federal Register** (Vol. 72, No. 46, Page 10721) on 9 March 2007. A public hearing was held on Guam 28 March 2007 to provide Federal, Territorial, and local agencies and interested parties the opportunity to provide oral and written comments on the DEIS. The Navy considered relevant issues raised during the 45-day public comment period for the DEIS. The Navy received 11 written comment letters by agencies, organizations and interested individuals during the DEIS public comment period. Issues raised during the DEIS public comment period are summarized in Section 1.6 of the FEIS.

The FEIS was filed with the USEPA on 11 October 2007. A Notice of Availability of the FEIS was published in the **Federal Register** on 19 October 2007 (Vol. 72, No. 202, Page 59287), initiating a 30-day wait period (no action period) which ended on 19 November 2007. The FEIS included identification of the Preferred Alternative, best management practices (BMPs) and mitigation measures to reduce environmental consequences, and public and agency comments on the DEIS as well as responses to those comments.

Alternatives Analyzed: The Navy initially evaluated a range of alternatives that would meet the purpose and need of the action and applied preliminary screening criteria to identify those that were ''reasonable'' (i.e., practical and feasible from a military mission, operations, technical, and economic standpoint). The screening process and criteria were set out in the DEIS. A range of alternatives were initially considered, but not all were carried through the EIS analysis because they did not satisfy the screening criteria.

Of the alternatives considered, the Navy determined that only two alternatives involving extension of the existing Kilo Wharf met the purpose and need and the preliminary screening criteria and were carried through the EIS analysis, in addition to the No Action Alternative. They are the ''West Extension Alternative'' and the ''East-West Extension Alternative.'' Both alternatives would provide adequate berthing for the T-AKE in accordance with DoD technical design standards for safe and efficient ordnance loading/offloading. Rationale for elimination of the other alternatives considered are discussed in Section 2.2.3 of the FEIS.

West Extension Alternative. Under this alternative, the existing wharf would be extended by 400 ft (122 m) to the west. This alternative would take about 26 months to construct, including approximately six months of dredging. In-water work would be limited to the west side of the existing wharf. An additional mooring island would be constructed on the reef flat to the west of the existing mooring island for construction period vessel mooring.

The Navy selected the West Extension Alternative as its preferred alternative in large part because it best avoided and/or minimized potential environmental impacts, when compared with the other alternative considered that met the project objectives (i.e., the East-West Extension Alternative). Furthermore, the West Extension Alternative would meet all technical and operational requirements for the project at a lower cost and shorter construction period than the East-West Extension Alternative.

East-West Extension Alternative. This alternative would extend Kilo Wharf by 115 ft (35 m) to the east and 285 ft (87 m) to the west. This alternative would take about 28 months to construct including approximately eight months of dredging. In-water work would be necessary on both the west and east ends of the wharf, leading to a longer construction period with greater impacts on wharf operations. Two additional mooring islands would be constructed on the reef flat to the east and west of the existing mooring islands for construction period vessel mooring.

No Action Alternative. Under the No Action Alternative, the T-AKE would replace the current ammunition ships forward-deployed to AHNC as planned, but would berth at the existing, substandard Kilo Wharf. The No Action Alternative assumes that the existing explosives safety quantity distance (ESQD) arcs originating from Kilo Wharf would be revised to meet current Navy standards, with or without extension of the wharf. The No Action Alternative provides the least environmental impacts because it would not involve any change to the physical environment. However, this alternative does not meet the purpose and need and is not operationally acceptable because it does not conform with Navy design criteria for ammunition wharves, would adversely impact ordnance operations efficiency, would not adequately provide electrical power, fire protection, lighting, telecommunications, and security surveillance for the T-AKE, and presents substantial challenges to properly secure the larger ship during rough sea conditions.

Environmentally Preferred Alternative. Through the EIS analysis, the West Extension Alternative was found to be the environmentally preferable alternative of the alternatives that met the purpose and need of the proposed action and operational requirements. As described in the FEIS, the West Extension Alternative would have the same or similar impacts as the East-West Extension Alternative in most environmental resource areas analyzed in the EIS, with the following exceptions. The West Extension Alternative would result in fewer adverse impacts than the East-West Extension Alternative on: (1) Marine benthic habitats, specifically coral reef resources (smaller structural and sedimentation impact footprints, resulting in fewer ecological services lost); (2) Essential Fish Habitat (shorter duration of construction period impacts); and (3) land or water use constraints resulting from the variations in the wharf's ESQD arcs (East-West Extension Alternative ESQD arcs encumber 17 additional Navy family housing units and one additional dive/marine recreational site compared to the West Extension Alternative).

Decision: After considering the potential environmental consequences of the operationally viable alternatives (West Extension Alternative and East-West Extension Alternative), and the No Action Alternative, the Navy has decided to implement the preferred alternative (West Extension Alternative) and extend Kilo Wharf 400 ft [122 m] to the west.

Environmental Impacts. In the EIS, the Navy analyzed the environmental impacts that could occur as a result of implementing each of the alternatives, as well as the No-Action Alternative. Chapter 4 of the FEIS provides a detailed discussion of impacts and mitigation measures. This ROD, however, focuses on the impacts associated with the West Extension Alternative.

Physical Environment: Construction period dredging associated with the West Extension Alternative would generate total suspended sediment loads that temporarily exceed Guam Water Quality Standards for marine waters, but are anticipated to return to background levels rapidly after cessation of dredging. BMPs to avoid or minimize water quality impacts as described in Section 4.2.6.4 of the FEIS will be implemented. BMPs will include appropriate use of silt curtains, disposal of dredged materials at approved disposal sites, and water quality monitoring.

The construction contractor will prepare a Storm Water Pollution Prevention Plan (SWPPP) and a Storm Water Notice of Intent before work commences. The SWPPP will meet the Guam Environmental Protection Agency (GEPA) general permit requirements for storm water discharges from construction sites and select applicable BMPs. During the operational period, Kilo Wharf will be covered under a multi-sector general permit, which controls industrial discharges.

No adverse operational period impacts to marine water quality are expected.

Biological Resources: The West Extension Alternative would have unavoidable adverse impacts to approximately 4.75 acres (ac) (1.92 hectares [ha]) of benthic habitat, including about 0.39 ac (0.16 ha) of high density live coral cover (i.e., ''coral reef communities''). This area of marine benthic habitat provides ecological services that would unavoidably be affected due to structural impacts from construction dredging and fill. Dredging-related sediment plumes have the potential to adversely affect marine habitats. The affected areas would be localized around the dredging site and primarily affect marine habitats with low coral cover. Sediment transport computer modeling indicated that the West Extension Alternative could generate adverse sedimentation levels potentially affecting about 1.69 ac (0.68

ha) to 14.88 ac (6.02 ha) of benthic habitat, including about 0.14 ac (0.06 ha) to 0.72 ac (0.29 ha) of coral reef communities, over the course of the dredging period, depending on dredging rate and environmental conditions present.

There would be adverse impacts to coral reef biota due to the general loss of ecological services, including non-motile species within the construction impact area. The West Extension Alternative would pose low potential for adverse effects on overall coral reproduction in the region of influence, since the Navy will comply with U.S. Army Corps of Engineers (USACE) permit conditions requiring that it avoid dredging activities during the peak spawning event on Guam, which is seven to ten days after the full moon in July, in consultation with Guam Division of Aquatic and Wildlife Resources. Construction BMPs described in Section 4.3.1.1 of the FEIS will be implemented to minimize impacts on the coral reef communities.

No adverse impacts on Federal- or Territory-listed protected species or sensitive environments are expected during construction or operation. The Navy conducted informal consultation with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NOAA Fisheries) under Section 7 of the Endangered Species Act (ESA). The Navy determined that although threatened or endangered species (i.e., sea turtles) may be affected by the West Extension Alternative, they are not likely to be adversely affected. By letter dated 29 June 2007, NOAA Fisheries concurred with the Navy's determination (Appendix N of FEIS). The Navy will implement construction period BMPs to minimize the potential for adverse effects on sea turtles, as described in Section 4.3.3.1 of the FEIS.

The Navy initiated formal Essential Fish Habitat (EFH) consultation 24 April 2007. The Navy concluded that the West Extension Alternative would have temporary adverse impacts on motile Fishery Management Plan species, eggs, and larvae due to dredging and in-water construction. NOAA Fisheries reviewed the EFH assessment and provided conservation recommendations dated 4 June 2007. The Navy supports the conservation recommendations provided 15 June 2007 with the following clarification: (1) The preferred mitigation is the Cetti Bay watershed reforestation; (2) success of the preferred mitigation will include performance measures with input from resource agencies; (3) dredging will be avoided during the peak coral spawning (seven to ten days after the July full moon); and (4) BMPs will be utilized to minimize impacts to corals. NOAA Fisheries conservation recommendations are addressed in the FEIS. The Navy's EFH assessment and correspondence with NOAA Fisheries are included in Appendix M of the FEIS.

No adverse operational period impacts to the biological environment are anticipated from implementation of the West Extension Alternative. Ship berthing and unberthing procedures would be similar to that of the No Action Alternative and would continue with or without the wharf extension.

Social and Economic Environment: The West Extension Alternative would not increase the number of family housing units or dive sites encumbered by the ESQD arcs above the No Action Alternative levels.

Cultural Resources: No impacts to cultural resources are expected. Guam State Historic Preservation Officer (SHPO) concurred with the Navy's determination of ''no historic properties affected'' (See Appendix O of FEIS for correspondence with Guam SHPO).

The West Extension Alternative presents no significant impacts to climate and air quality; geology, seismology, soils and marine sediments; ambient noise; physical oceanography; groundwater quality; invasive species; terrestrial flora and fauna; aesthetics/visual environment; economics; social and demographic factors; infrastructure and services; and hazardous and regulated materials and waste.

Mitigation Measures. The Navy will implement BMPs during construction and operation of the West Extension Alternative to avoid or minimize adverse environmental impacts. Because the West Extension Alternative will result in unavoidable adverse environmental impacts, primarily to the marine environment, the Navy will also fund or implement compensatory mitigation to provide substitute resources or environments for those ecological services expected to be lost.

In coordination with Federal and Government of Guam (GOVGUAM) resource agencies, the habitat equivalency analysis (HEA) process was used to estimate the spatial and temporal ecological service losses to marine benthic habitats resulting from the West Extension Alternative and identify appropriate levels of mitigation to compensate for the losses. Independent but coordinated HEA analyses were conducted by both the resource agencies and the Navy.

Findings from both HEAs indicated similar levels of ecological services lost for the West Extension Alternative: the resource agency HEA estimated losses of 102 acre-years and the Navy estimated 116 acre-years of lost ecological services in its HEA. The HEA resulted in 102–116 acre-years.

Selection, scaling and implementation of appropriate compensatory mitigation actions are being carried out in consultation with USACE, NOAA Fisheries, U.S. Fish and Wildlife Service (USFWS), USEPA, and GOVGUAM resource agencies. A USACE permit would be required for the West Extension Alternative for alteration of navigable waters and discharge of fill material into the water (caisson and construction mooring islands). This permit is the vehicle through which compensatory mitigation would be implemented. The Navy has coordinated with the resource agencies to develop a Mitigation Plan to satisfactorily meet the USACE permit requirements. The Navy and resource agencies have agreed on the general concepts of the Mitigation Plan.

Before, during, and after construction, additional data would be collected on physical, chemical and biological factors in the vicinity of the construction project and used in post-construction monitoring and analysis. The Navy is developing the details of this monitoring plan, which will be submitted in the USACE permit process.

Preferred Mitigation. The Cetti Bay watershed reforestation project is the Navy's preferred mitigation action. It was proposed by GOVGUAM based on HEA principles (i.e., identifying lost ecological services to be replaced). Although there is no direct correlation between the number of lost acre years of coral and number of acres to be reforested as compensatory mitigation, a mutual consensus was reached between Navy and GOVGUAM that the Cetti Bay watershed reforestation project will consist of reforestation of up to 500 ac (202 ha) of savanna grasslands and/or badlands within the Cetti Bay watershed, located on the southwestern coast of Guam, approximately 9 miles (14.4 kilometers) south of Apra Harbor. As stated in the Guam Department of Agriculture (GDOAG) reforestation plan, the bay's coral reef resources have been heavily degraded over the past few decades. One of the factors is believed to be upland erosion caused primarily by road construction, wildland fires, and feral ungulates (unrelated to Navy activities). Reforestation of the savanna grasslands and/or badlands within the Cetti Bay Watershed will reduce terrigenous sediment loads entering Cetti Bay, thereby improving water quality. This may have an indirect beneficial effect on the coral reef habitat

in the receiving waters. Reducing sediment flow is intended to support and enhance the terrestrial and marine ecosystems, including fish and wildlife habitat within Cetti Bay and the Cetti Bay watershed. The following provides examples of the actions included in the reforestation project: (1) Conversion of savanna grasslands and/or badlands to forest lands around Cetti Bay; (2) reforestation of the area's badlands; (3) fencing of identified reforested areas to provide ungulate control; and (4) implementation of erosion BMPs.

Performance standards for the Cetti Bay reforestation projects will not be tied to coral health improvement. Coral health monitoring conducted in Cetti Bay will not trigger a requirement for additional Navy mitigation action.

GDOAG will be responsible for the implementation and long term management of the reforestation projects. A cooperative agreement between the Navy and GDOAG will be executed to authorize the transfer of Navy funds to GDOAG; therefore an appropriate real estate agreement between the Navy and GOVGUAM is required for the Cetti Bay parcel Lot No. 275, which is the area that will be reforested. The Navy will fund a third party contractor to conduct the terrestrial and marine monitoring at Cetti Bay as prescribed in the Mitigation Plan.

The USACE's Permit mitigation procedures call for identification of a contingency mitigation project. The USACE permit would identify specific requirements associated with the preferred mitigation; however, failure to meet the requirements would trigger implementation of the contingency mitigation. An example of such a requirement would be that GOVGUAM provides real estate protection in perpetuity to the Cetti Bay mitigation site as described in USACE's DEIS comment letter in Appendix B–4 of the FEIS. Accordingly, the Navy, with USACE support, identified a contingency mitigation plan.

Contingency Mitigation. The contingency mitigation plan consists of four components: Ordnance Annex Watershed Afforestation; Outer Apra Harbor Deep Water Substrate; Coral Reef Ecosystem Protection at Orote Point Ecological Reserve Area (ERA); and Shallow Water Reef Enhancement. Should it be required, by the USACE, to implement the contingency mitigation plan, all four of the components would be implemented. The deep water substrate component alone would provide levels of ecological services equivalent to the estimated acre-year losses. Therefore, the combined actions would provide benefits that would more than offset the estimated ecological service losses due to the West Extension Alternative.

Ordnance Annex Watershed Afforestation. The Navy will conduct watershed afforestation of approximately 150 ac (60 ha) of savanna grassland vegetation in approximately 50 ac increments over a 3-year period within the northeastern portion of the Navy's Ordnance Annex. Afforestation will help reduce excessive terrigenous sediment loads entering Talofofo Bay, thereby improve water quality and support and enhance the terrestrial and marine ecosystems. This may have an indirect beneficial effect on coral reef habitat in the Bay.

Outer Apra Harbor Deep Water Substrate. The Navy will place concrete or limestone block substrate in specific locations in Outer Apra Harbor to offset habitat losses from implementation of the West Extension Alternative. Four sites (Glass Breakwater, Kilo Wharf, San Luis Beach, and Sasa Bay) have been evaluated as candidate deep water substrate sites. The substrate will increase overall biomass and provide new benthic habitat. This mitigation component has been scaled such that if it were to be the sole mitigation project implemented, it would fully offset the ecological services lost due to the West Extension Alternative.

Coral Reef Ecosystem Protection at Orote Point ERA. The Navy will expand the Orote ERA Area Marine Unit to include approximately 80 ac (32 ha) of Navy-owned submerged lands around Orote Point to Adotgan Point area, and approximately 32 acres (13 ha) of the Terrestrial Unit including the beaches and limestone forest area inland from the Marine Unit. The expanded Marine Unit would include shallow water benthic habitat around Orote Point that contains both hard and soft corals. The Navy will modify the management plan for the Orote ERA to restrict fishing and other types of consumptive activities that could potentially adversely affect EFH.

Shallow Water Reef Enhancement. The Navy will transplant corals that would be directly impacted by the wharf extension to several new sites on Navy submerged lands in Outer Apra Harbor. Navy will enter into an agreement with a qualified organization to physically move and transplant as much live coral as feasible to sites on Navy-owned lands. Project will focus on transplanting large specimens. A detailed transplanting plan will be prepared which will include methods for moving large colonies, techniques for stabilizing colonies at the transplant sites, and a monitoring protocol.

Since the contingency mitigation projects would take place wholly within Navy lands (including submerged lands), the Navy would be responsible for their monitoring and maintenance.

Agency Consultation and Coordination: The Navy consulted and coordinated with Federal and GOVGUAM resource agencies regarding: (1) ESA Section 7 consultation with NOAA Fisheries; (2) Magnuson-Stevens Fishery Conservation and Management Act consultation with NOAA Fisheries; (3) Section 106 consultation under the National Historic Preservation Act of 1966 with the Guam SHPO; and (4) Coastal Zone Management Act consistency determination with GOVGUAM Bureau of Statistics and Plans (BSP). Correspondence relating to these consultations is found in Appendices M, N, O and P of the FEIS. In addition, the Navy invited three Federal agencies to be cooperating agencies in the preparation of the EIS: USACE, NOAA Fisheries, and USFWS. Of the three agencies, only the USACE agreed to be a cooperating agency. Appendix A of the FEIS contains correspondence with USACE and the other Federal agencies invited to be cooperating agencies.

The FEIS includes an evaluation of potential impacts of implementing the preferred and contingency mitigation projects. In general, the watershed mitigation projects would have a beneficial effect on the environment by reducing erosion and sediment loading in surface and nearshore waters, thereby improving water quality. This may have an indirect beneficial effect on coral reef habitats in the receiving waters. The contingency mitigation projects would have direct beneficial effects on the marine environment either through habitat replacement (Deep Water Substrate and Shallow Water Reef Enhancement) or conservation (Orote ERA Expansion). The preferred and contingency mitigation projects would not adversely affect protected species or historic or cultural sites and, overall, would have beneficial effects on Guam's coastal management zone. GOVGUAM BSP concurred with the Navy's consistency determination that the proposed action and associated mitigation actions would be consistent to the maximum extent practicable with the enforceable policies of Guam's approved Coastal Management Program.

Responses To Comments Received On the FEIS: Four Federal agencies (USACE, USEPA, NOAA Fisheries, USFWS), three GOVGUAM agencies (GDOAG, GEPA, BSP), one organization

(The Nature Conservancy [TNC]) and a single commenter provided comment letters. Substantive comments are addressed below by topic.

Purpose and Need: Alternatives: NOAA Fisheries recommended reconciling inconsistencies in justifying the purpose and need for the proposed action and suggested that the descriptions of the No Action Alternative were inadequate for full evaluation. USFWS commented that the project's purpose and need do not support the proposed action. GDOAG and TNC commented that the proposed action is not economically justified.

The FEIS states that the No Action Alternative would not achieve the project objectives and COMNAVREGMARIANAS would not meet its mission to provide adequate waterfront facilities to replenish U.S. Fifth and Seventh Fleets. The FEIS explains that the action is needed because Kilo Wharf is inadequate to support the T-AKE and there are no other suitable facilities on Guam. The FEIS also states that although the No Action Alternative does not meet project objectives and is considered operationally unacceptable (for reasons described in the FEIS and earlier in this ROD), it provides a baseline to evaluate effects of the West Extension Alternative and East-West Extension Alternative. The decision to proceed with a proposed action is not made solely upon economic justification. Environmental, economic, and other factors were considered along with the operational need for the wharf extension in the decision-making process.

Compensatory Mitigation. USACE identified the required contents of the Navy's mitigation plan, which will be submitted in conjunction with the project's necessary Department of the Army permit. USEPA commented that the monitoring would be underfunded and not enable measurements of success. The Navy is coordinating with the resource agencies to develop a Mitigation Plan that will satisfy USACE mitigation and monitoring requirements. The Mitigation Plan will be submitted with the permit application package.

USEPA, GDOAG, and GEPA expressed concern over the Navy's timetable for reaching an acceptable agreement with the resource agencies on the preferred Cetti Bay watershed mitigation and questioned the Navy's commitment to this project. TNC commented that the Cetti Bay watershed mitigation is the only acceptable mitigation option. The Navy's preferred mitigation is the Cetti Watershed reforestation. The Navy and resource agencies have agreed on the general concepts of the Cetti Watershed reforestation plan to be submitted during the permitting process.

USEPA, NOAA Fisheries, USFWS, GDOAG, and BSP expressed concerns over the adequacy of the Navy's contingency mitigation plan to offset lost ecological impacts. USFWS requested agency coordination if the contingency mitigation had to be implemented. Commenters requested that the Navy implement the Ordnance Annex afforestation (BSP, TNC), Orote ERA expansion (TNC), and coral transplantation (BSP, TNC) either as part of its natural resources management stewardship or as a BMP and not as compensatory mitigation. BSP requested that the Navy discuss the Orote ERA expansion with resource agencies to resolve concerns about the imposition of planned fishing restrictions associated with the expansion.

The contingency mitigation plan is not the Navy's preferred mitigation, and would only be implemented if the preferred Cetti Bay watershed reforestation project does not proceed. It was developed in compliance with the USACE, whose mitigation requirements necessitate a contingency mitigation plan in the event the preferred plan is not implementable in accordance with USACE guidelines. The FEIS provides the rationale for each of the contingency mitigation components and describes their likely benefits to the environment. The deep water substrate component has been scaled such that if it were to be the sole mitigation project implemented, it would fully offset the ecological services lost due to the West Extension Alternative; the other three contingency mitigation components would provide additional ecological benefits. The Navy presented its contingency mitigation plan for resource agency comment prior to publication of the FEIS. Although the resource agencies indicated they did not support creation of artificial substrate, they did not provide alternatives for consideration. In its DEIS comment letter of 23 April 2007, the USACE stated that introducing deep water substrate at more than one location within Apra Harbor would ''provide appropriate substrate that would rapidly be colonized by *Porites*, macro-algae, and other organisms similar to those found in the deeper areas on the impacted site, and thereby provide perpetual reef habitat.'' Access to the Orote ERA is already restricted by its location within an active Navy base and ordnance handling activities in Kilo Wharf; therefore, any fishing restriction within the ERA will be enforced because of security and safety issues.

Marine Biological Environment-Existing Environment. Commenters questioned the Navy's benthic habitat mapping methodology (NOAA Fisheries) and its characterization of certain benthic habitats and resources (NOAA Fisheries, USFWS); claimed that the Navy too narrowly defined the coral reef community (NOAA Fisheries; GDOAG) and undervalued the affected marine habitats (NOAA Fisheries); requested the analysis incorporate more of the resource agencies' survey data in describing the affected marine resources (NOAA Fisheries, USFWS); suggested a correction to the table comparing resource agency and Navy quantitative coral data (USFWS); commented that the FEIS does not provide an analysis of coral reef resources at Kilo Wharf in terms of contributions (e.g., reproduction, genetic diversity, future survival) to other coral reef resources within Apra Harbor (USFWS); and objected to the representation of the resource agencies' marine biological assessment in the FEIS (NOAA Fisheries, USFWS).

The Navy's benthic habitat mapping methodologies were derived from the scientific literature and are described in the relevant studies, which were provided to the resource agencies prior to their in-water surveys and prior to inclusion in the DEIS. The EIS discusses the objectives and limitations of various approaches to assessing and characterizing benthic habitat data. The result of both methodologies utilized resulted in very close HEA results in acre-years. While all details of the technical reports (in the Appendices) are not reiterated in the FEIS, an adequate amount of information is presented to support the overall conclusions. The FEIS discussion of the resource agencies' assessment was not intended to undermine or criticize the data presented or methods employed. The purpose was to provide a general summary of the resource agencies' methods and findings, with attention to similarities and differences between the Navy and resource agency studies. FEIS reviewers were also encouraged to review the full reports appended to the FEIS. Despite the different approaches used to gather and present existing conditions data, the conclusions reached were similar. The resource agencies' and Navy's HEA projections of lost ecological services at Kilo Wharf were similar.

The FEIS describes the other (non-coral) components of coral reef benthic community and states that all the habitats provide ecological services. The

FEIS does explore the affected habitats; the results of the resource agencies' impact analysis and HEA are referenced and summarized in the FEIS text and received full evaluation. Complete reports are included as appendices. Both HEA results included estimates of the range of ecological services lost on all potentially impacted marine benthic habitats. The Navy is committed to providing full compensatory mitigation to offset lost ecological services estimated by the resource agencies' HEA.

Although it would not affect the analysis or findings of the FEIS, Table 3–9 should have been entitled ''Comparison of Coral Cover by Resource Agency and Navy Zones'' to avoid confusion.

The Navy recognizes that more than one approach may be employed to gather and present existing conditions data and to predict marine habitat impacts. It is currently working with Federal resource agencies to establish data gathering and pre- and post-construction monitoring protocols for future Navy projects (e.g., NOAA Coral Reef Ecosystem Division-sponsored Guam Monitoring Protocols Workshop held in December 2007).

Marine Biological Environment-Environmental Consequences. Commenters questioned the findings of the sediment transport numerical model and associated sedimentation impact analysis (NOAA Fisheries, USFWS) and its threshold values for impacts (USFWS); requested clarification of BMPs for silt curtains, a definition of ''sensitive coral habitat'' in a BMP, and modification of a BMP to ensure that control measures are in place and functioning properly throughout each work shift (NOAA Fisheries); raised the issue of impacts from the release of sediment-entrained metals into the water column (NOAA Fisheries); commented that the construction period (GDOAG) and operational impacts of tugboats on benthic habitats were not considered (NOAA Fisheries); recommended use of coral densities and sizes rather than coral cover in the analysis (NOAA Fisheries); objected to the analysis of coral spawning and recruitment impacts (NOAA Fisheries, USFWS, GDOAG, BSP, TNC) and suggested that suspension of dredging operations should occur over an expanded timeframe (BSP, TNC); questioned the water chemistry study methodology (NOAA Fisheries; GEPA); raised the issue of the lack of nighttime surveys for mobile invertebrates (NOAA Fisheries); disagreed with the impact analysis for the loss of vertical slope (GEPA); requested reevaluation of indirect long-term adverse impacts (GDOAG); requested compliance with stormwater BMPs in CNMI *and Guam Stormwater Management Manual* (GEPA); expressed concern that the FEIS minimizes impacts by considering only high coral cover areas (NOAA Fisheries, TNC); and requested that the impact analysis should include habitat types with little or no live coral coverage (TNC).

The water current data sampling period and meter placement provided the necessary information for the sediment transport model, including surface water movement. Wave effects are important only in shallow water and would likely inhibit sediment deposition through increased water motion. The study adopted a conservative (i.e., ''worst case'') strategy by not including these effects in the model. Because the harbor floor, as well as cover of the reef flats, consists of sediment similar to dredging-related sediments, once the dredging-related sediment is dispersed by currents, there is likely to be no difference in the sedimentation impacts compared to the present situation. The marine ecosystem impact analysis prepared for the EIS included a thorough review of the existing scientific literature of sedimentation impacts to coral, and used a conservative threshold value to estimate impacts. The Navy reviewed an article on ''marine snow'' cited in the USFWS comments for relevance to the potential sedimentation impacts to corals. The Navy concluded that because riverine muds and high nutrient water (which were key factors in the experiment reported in the article) are not components in the Kilo Wharf setting, the article's findings do not warrant the examination of lower threshold dredging-related sedimentation concentrations on coral reefs. In spite of the diverging views on the Navy's sediment transport modeling and associated impacts, the FEIS included the conclusions of the resource agencies' impact assessment and HEA, which included their projections of sedimentation effects on benthic organisms.

BMPs to avoid or minimize water quality impacts and impacts to coral reef habitats during construction are discussed in the FEIS. BMPs that will be required as conditions to the USACE permit will be addressed in the Mitigation Plan through the permitting process.

The FEIS lists metals that were reported in sediment tested at the project site, and also reports that they were reported at concentrations below the ER-L (effects range low). The text further states that these metals are likely to adhere to sediment which will resettle with the sediment rather than be released into the water column. Since the concentrations were below ER-L, these conditions are not elevated above what would be considered normal levels. In addition, these sediments presently exist in the harbor, therefore, any effect to fish or invertebrates would already be occurring. Presently, there are no documented indications that the metal concentrations would lead to blooms. As storm events resuspend sediments normally, any effects would be part of ongoing processes.

The FEIS discusses potential operational period impacts of tug boats in Section 4.3.1.1. Tug boat operations were not addressed in the construction period impact analysis because they are not considered a new activity related to construction. Tug boats already operate on an ongoing basis at the wharf, supporting ships far larger than a dredging construction barge.

The FEIS addressed the varying methods and included the resource agencies' survey in its entirety as an appendix in the interest of full disclosure.

The FEIS provides rationale for the conclusion that the project dredging is not likely to have adverse or significant direct or indirect impacts on the long-term reproductive potential and structure of the coral community in Apra Harbor. The consideration of the effects of sedimentation to corals was based on the resource agencies' species list and not on percent live coral in order to make all corals that were noted to occur essentially equal in terms of spawning potential. To further reduce potential adverse impacts, the Navy has committed to avoid dredging activities during the peak coral spawning period on Guam (seven to ten days after the full moon in July in consultation with GDAWR) in accordance with U.S. Coral Reef Task Force guidance and USACE permit conditions.

While replicate water chemistry sampling would have provided additional information on seasonal variations, the baseline water chemistry study results showed that the waters in the vicinity of the wharf are basically oceanic with a small indication of effect from draining of inner harbor water seaward, and water moving from land toward the center of the harbor. The Navy will implement a water quality monitoring plan, which will include a pre-construction component, as well as control stations. The Navy will also comply with the conditions of USACE permits required for the project.

Nighttime surveys for benthic invertebrates may have produced higher counts. However, the FEIS summarized the results of the resource agency-prepared marine benthic impact analysis and levels of corresponding compensatory mitigation, which the Navy has agreed to implement or fund. The HEA process, which both the Navy and resource agencies utilized, accounts for habitat or ecosystem losses which would include the broad matrix of marine flora and fauna associated with the underlying coral reef resource.

The FEIS notes that the loss of the vertical wall created by the original Kilo Wharf construction dredging would be replaced by similar, hard vertical substrate. The construction mooring island was not considered as part of the mitigation for ecological services lost, although it too would provide vertical substrate. Habitat removed or covered by both the construction mooring island and new shore protection was factored into the acre-year loss estimates for which the Navy will implement or fund compensatory mitigation.

The EIS states that should sedimentation effects occur, the affected habitats are able to recover over time when the stressor is removed, although species composition may be affected. This is evidenced by the healthy condition of the coral reefs that were adversely affected by sedimentation from the original Kilo Wharf construction (i.e., west and east of the existing wharf). Reevaluation of indirect long-term adverse impacts is not necessary because the FEIS reports the results of the resource agencies' impact analysis and HEA. These results considered the resource agencies' estimated sedimentation effects west of the project area, extending to Orote Island.

The Navy will consider the recommendations of the CNMI and Guam Stormwater Management Manual after a final report is issued. The Navy will comply with its NPDES permit regulations regarding stormwater runoff at the expanded wharf.

The ecological services lost estimated in both the Navy and resource agency HEAs accounted for all habitat types impacted and not only those with high coral cover. The Navy will fund or implement mitigation commensurate with the total lost ecological services (both spatial and temporal) identified by the resource agencies. The Cetti Bay watershed reforestation is the Navy's preferred mitigation. The Navy is working collaboratively with the resource agencies on the details of the preferred mitigation plan.

Cumulative Impacts. Commenters requested expanded analysis of cumulative effects of dredging on coral spawning in Apra Harbor (NOAA Fisheries); commented on the adequacy of cumulative impact analysis (NOAA Fisheries; TNC) and quantified data on the historical coral reef resources in Apra Harbor (NOAA Fisheries); requested the addition of a table containing the amount of actual direct and indirect impacts on coral reef communities and land/water use (GDOAG); and commented that the analysis should be considered in the context of reef decline worldwide, U.S. and on Guam (BSP).

The FEIS described the likely effects of in-water construction on coral spawning and subsequent recruitment of planulae to the coral community within the region of influence (ROI). The analysis included evaluation of the spatial extent of potentially affected habitat; likely coral species to be affected, the susceptibility of their spawning characteristics to the effects of sedimentation, and overall sedimentation tolerance levels; and, based on analyses of these factors, concluded that there is little potential for sedimentation effects (if they occur) to have a negative impact on overall coral reproduction in Apra Harbor—both for areas that support live coral and also in those that do not.

The FEIS cumulative impact assessment provides a sound characterization of past, present and reasonably foreseeable future actions in accordance with CEQ guidance. The absence of historical records on coral reef communities makes quantification of coral reef conditions in the post-WWII era speculative. The FEIS cumulative impacts analysis describes available pertinent information on past, present and future projects and therefore addition of a new table would not increase available data. The FEIS defines the ROI for cumulative impacts to coral reef communities as Inner and Outer Apra Harbor because this area represents the likely extent of the Kilo Wharf project's potential to contribute collective impacts.

Miscellaneous Comments. There were numerous miscellaneous comments, including, but not limited to: comment that FEIS lacks information to evaluate finding of ''no adverse impact to geological features'' (NOAA Fisheries); GDOAG commented that a GDOAG permit is required for removal of coral; resource agencies requesting involvement in the Navy's ROD development (USEPA, NOAA Fisheries, USFWS); objections to the adequacy of the FEIS (USFWS, GDOAG), including its description of the existing environment/lack of incorporation of resource agency data (USFWS), environmental consequences (USFWS), and the Navy's lack of commitment to adequate compensatory mitigation (USFWS, GEPA). GDOAG commented that the FEIS lacked sufficient information and recommended development of a supplemental EIS. Commenters stated that the economic value of the Kilo Wharf coral reefs cited in the FEIS represent an incomplete valuation of impacted resources and are misleading (USFWS); objected to the FEIS's characterization of the Federal Coastal Zone Management Act consistency concurrence for the contingency mitigation actions (BSP); requested clarification on impacts to resident seabirds (GEPA); requested ciguatera sampling of representative fishes (GEPA); requested discussion of Marine Mammal Protection Act (MMPA) (GEPA); stated that the Navy needs to consult with GDOAG and federal agencies regarding lighting specifications to help avoid or minimize potential impacts to threatened/endangered species due to concern with impacts to sea turtle nesting from dredging operations, fuel spills at night, and ship wakes from larger vessels (GDOAG); stated that the FEIS does not sufficiently describe placement of security and perimeter lighting to determine potential impacts to nesting and hatchling turtles (GDOAG); commented that FEIS is unclear on how Navy will address potential invasive species introductions via hull fouling (TNC); requested expanded discussion of Guam's water resources from a historical perspective (single commenter); and provided several factual corrections that do not affect the overall analysis or mitigation levels (GEPA, TNC).

The permanent removal of the coral reef and placement of fill on the coral reef flat is addressed in Section 4.2.2.1. The FEIS text in this section states that this substrate is common in the ROI. Geologically, the reef flat and reef slope are common in the ROI.

5 GCA § 63602 and § 63603 is not applicable to this project because the Navy is not commercially harvesting or commercially taking the coral.

By Navy policy, it does not include other agencies in development of its RODs.

The FEIS includes the results and full reports of three Navy marine surveys, a resource agency survey, and a current monitoring/sediment transport computer modeling study. The FEIS addressed all the comments provided on the DEIS either in the body of the FEIS

or in responses included in Appendix B–4 of the FEIS. If there were topics or conclusions contained in the DEIS that were not commented on at that time, it was concluded that they were acceptable to the DEIS reviewers. The FEIS explained that different methods were used in the resource agency and Navy surveys and analyses and included the resource agency reports in their entirety for interested readers. The FEIS summarized the marine habitat impacts prepared by the resource agencies and their resulting HEA estimates of lost ecological services (i.e., acre-year losses). The resource agencies involved in the marine assessment and impact analysis that formed the basis for the HEA lost ecological services estimate included both Federal (NOAA Fisheries, USFWS) and GOVGUAM agencies (GDOAG, GEPA). The Navy has committed to funding or implementing compensatory mitigation to fully offset the levels of ecological services calculated by the resource agencies. Therefore, the Navy considers the level of information and analysis in the FEIS sufficient and that a supplemental EIS is unwarranted.

The Navy agreed to fund/implement compensatory mitigation to offset lost ecological services (i.e., a service-to-service approach to scaling, rather than a valuation approach), commensurate with the HEA prepared by the resource agencies. The Van Beukering et al. (2007) study results cited in the FEIS have not been factored into compensatory mitigation scaling for the Kilo Wharf extension project, but were included in the EIS to illustrate that there are multiple approaches to estimating economic impacts of resource losses.

The Navy's completed Guam Coastal Management Program (GCMP) Assessment (FEIS Appendix P) evaluated the coastal zone consistency of wharf extension alternatives and the preferred and contingency mitigation plans. BSP's concurrence letter (5 September 2007) does not exclude any specific aspects of the Navy's determination or establish any preconditions for its concurrence.

Orote Island, a recognized habitat for migratory birds, is too far away and sheltered by Orote Point to be impacted significantly by existing and proposed activities at Kilo Wharf. Accordingly, the assessment of Migratory Bird Treaty Act-protected species in the FEIS is sufficient and additional information on the status of resident migratory birds at Orote Island is not warranted.

Requests for ciguatera testing were made by GEPA in response to the DEIS. The Navy responded at that time (response in FEIS Appendix B–4 to DEIS comment T.4.7), the link between the incidence of reported cases of ciguatera and the occurrence of ''new'' surfaces underwater (as occurs with construction) has not been demonstrated, thus the need for such a monitoring program is not warranted. Furthermore, commercially available ciguatera test kits yield numerous false positives and could lead to a very inaccurate picture of conditions in a given area and whether there were increases in ciguatera incidence with the construction of the wharf.

The FEIS (Sections 3.3.3, 4.3.2.1) notes that marine mammals are uncommon in Apra Harbor, including the Kilo Wharf vicinity. Because of this, the FEIS concludes that there is little potential for adverse construction noise impacts on these species (Sec. 4.3.2.1). Therefore, there is little potential for ''taking'' of marine mammals protected under the MMPA.

The FEIS includes sufficient information to analyze potential impacts to sea turtles (e.g., description of new security floodlighting illumination power, general location of new lighting, site plan of the wharf extension and new access road). As described in both the DEIS and FEIS, there is no evidence in literature or from field survey that sea turtles have nested at the beaches at either end of Kilo Wharf, both recently and at the time of the original wharf construction. FEIS Sec. 4.3.3.1 describes potential construction period impacts on threatened and endangered species as well as BMPs that will be implemented during the construction period, which address both noise/light impacts and fuel spills. FEIS Section 4.3.3.2 concludes that none of the alternatives would impact threatened, endangered or protected marine species during the operational period, and that the operational and security lighting on the wharf will be at a lower illumination level than what is currently used on the wharf. There is little potential for wakes from T–AKE ships entering Apra Harbor to impact turtle nesting beaches since ships preparing to berth at Kilo Wharf enter the harbor at much slower speeds than ships heading for the commercial port or Inner Apra Harbor. The FEIS also notes that NOAA Fisheries concurred with Navy's informal Section 7 consultation determination that effects on sea turtles would be insignificant and never reach the scale where take occurs.

The Navy follows much stricter ballast water and hull cleaning procedures than most, if not all, the commercial and private vessels that use Apra Harbor. Since ships would berth in Apra Harbor and at Kilo Wharf with or without the project, the proposed wharf extension would have no effect on marine introductions related to hull fouling, and thus, was not specifically addressed in the FEIS.

Because the project does not have the potential to significantly affect Guam's water resources, a comprehensive discussion of Guam's water resources history is not warranted in the EIS.

Summary: In determining how to provide adequate berthing for the T–AKE class of ammunition ship at AHNC, Guam, Mariana Islands, I considered impacts to the following areas: physical environment, land and water use, the social and economic environment, infrastructure and services, cultural resources, hazardous and regulated materials and waste, and biological resources. I have taken into consideration the Navy's consultation with the NOAA Fisheries regarding endangered species and EFH, and the Guam SHPO regarding cultural resources. I have considered the comments sent to the Navy by Federal and Territorial resource agencies, other Federal and Territorial government agencies, and the public. I have considered the preferred and contingency mitigation projects. After carefully weighing all of these factors, I have determined that the West Extension Alternative, extension of Kilo Wharf by 400 ft (122 m) to the west, will best meet the needs of the Navy while also minimizing the environmental impacts associated with providing suitable facilities on Guam to accommodate the new class of ship.

Dated: December 20, 2007.

BJ Penn,

Assistant Secretary of the Navy (Installations and Environment).

[FR Doc. E8–103 Filed 1–8–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 4, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Common Core of Data Survey System.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 4,816.

Abstract: The Common Core of Data (CCD) is the National Center for Education Statistics' universe data collection for finance and nonfinance information about public school districts and schools. Information is collected annually from school districts about the districts and their member schools including enrollment by grade, race/ethnicity, and gender. Information is also collected about students receiving various types of services such as English Language Learner services. The CCD also collects information about the occurrence of high school dropouts. Information about teachers and staffing is also collected.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3519. 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. E8–200 Filed 1–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: January 16, 2008 from 2 p.m. to 3 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Acting Assistant Manager, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on January 3, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–147 Filed 1–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

January 2, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–069.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corp submits First Revised Eighty-fourth Revised Sheet 25 *et al.* to FERC Gas Tariff, Second

Revised Volume 1, to become effective 2/1/08.

Filed Date: 12/31/2007.

Accession Number: 20080102–0119.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP96–383–083.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission Inc. submits Fourth Revised Sheet 1415, Fifth Revised Sheet 1416 to FERC Gas Tariff, Third Revised Volume 1, to become effective 1/1/08.

Filed Date: 12/31/2007.

Accession Number: 20080102–0120.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP97–255–079.

Applicants: TransColorado Gas Transmission Company.

Description: Negotiated Rate Filing of TransColorado Gas Transmission Company.

Filed Date: 12/31/2007.

Accession Number: 20071231–5021.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP06–200–041.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Second Revised Sheet 8C and Original Sheet 9N to FERC Gas Tariff, Second Revised Volume 1, to become effective 1/1/08.

Filed Date: 12/31/2007.

Accession Number: 20080102–0121.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–148–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Twenty-Sixth Revised Sheet 25 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1 and First Revised Volume 2, to be effective 2/1/08.

Filed Date: 12/31/2007.

Accession Number: 20080102–0122.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–149–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corporation submits Third Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1, to become effective 2/1/08.

Filed Date: 12/31/2007.

Accession Number: 20080102–0123.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–150–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits its Penalty Revenue Crediting Report for the 2006—2007 contract year pursuant to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/31/2007.

Accession Number: 20080102–0124.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–151–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits its Penalty Revenue Crediting Report to its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/31/2007.

Accession Number: 20080102–0125.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–152–000.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Corporation informs FERC that they do not have any Penalty Revenue Credits Report for the 2006–2007 contract year.

Filed Date: 12/31/2007.

Accession Number: 20080102–0127.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Docket Numbers: RP08–153–000.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company informs FERC that they do not have any Penalty Credits to report for the 2006–2007 contract year under its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/31/2007.

Accession Number: 20080102–0126.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 email 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–145 Filed 1–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 2, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–200–185.

Applicants: CenterPoint Energy Gas Transmission Comp.

Description: CenterPoint Energy Gas Transmission Co. submits the negotiated rate agreements with Connect Energy Services, LLC.

Filed Date: 12/27/2007.

Accession Number: 20071228–0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 8, 2008.

Docket Numbers: RP96–320–075.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits interim contracts

executed by Gulf South and its various customers in relation to the East Texas Mississippi Expansion Project.

Filed Date: 12/19/2007.

Accession Number: 20071226–0078.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP97–186–005.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company LLC submits Substitute Second Revised Sheet 28 to FERC Gas Tariff, Third Revised Volume 1, to become effective 12/15/07.

Filed Date: 12/19/2007.

Accession Number: 20071220–0199.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP99–176–148.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America submits Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit (Agreement) between Natural and Encana Marketing (USA) Inc etc.

Filed Date: 12/21/2007.

Accession Number: 20071226–0077.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP04–67–002.

Applicants: NGO Transmission, Inc.

Description: NGO Transmission, Inc submits First Revised Sheet 1 *et al.* to FERC Gas Tariff, First Revised Volume 1, effective 1/1/08.

Filed Date: 12/21/2007.

Accession Number: 20071227–0151.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–41–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Second Revised Sheet 108 *et al.* to FERC Gas Tariff, First Revised Volume 1, effective 1/21/08.

Filed Date: 12/21/2007.

Accession Number: 20071227–0150.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–41–002.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Second Revised Sheet 108 *et al.* to FERC Gas Tariff, First Revised Volume 1, effective 1/21/08.

Filed Date: 12/26/2007.

Accession Number: 20071228–0045.

Comment Date: 5 p.m. Eastern Time on Monday, January 7, 2008.

Docket Numbers: RP08–47–001.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Nineteenth Revised Sheet 4C *et al.* to FERC Gas Tariff, Second Revised Volume 2, effective 1/28/08.

Filed Date: 12/28/2007.

Accession Number: 20071231–0192.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–132–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits First Revised Sheet 181 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1, effective 2/1/08.

Filed Date: 12/20/2007.

Accession Number: 20071226–0079.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–133–000.

Applicants: Texas Eastern Transmission, L.P.

Description: Texas Eastern Transmission, LP submits its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective 1/21/08.

Filed Date: 12/21/2007.

Accession Number: 20071226–0080.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–134–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits its Second Revised Sheet 104 *et al.* to its FERC Gas Tariff, Original Volume 1, effective 1/21/08.

Filed Date: 12/21/2007.

Accession Number: 20071226–0081.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–135–000.

Applicants: CenterPoint Energy-Mississippi River Transmission

Description: CenterPoint Energy-Mississippi River Transmission Corporation submits Eighth Revised Sheet 11 *et al.* to its FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 12/21/2007.

Accession Number: 20071226–0082.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–136–000.

Applicants: CenterPoint Energy Gas Transmission Company

Description: CenterPoint Energy Gas Transmission Company submits Fourteenth Revised Sheet 17 *et al.* to its FERC Gas Tariff, Sixth Revised Volume 1, effective 1/20/08.

Filed Date: 12/21/2007.

Accession Number: 20071226–0083.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–137–000.

Applicants: Cheniere Creole Trail Pipeline, LP.

Description: Cheniere Creole Trail Pipeline, LP's CD that contains FERC Gas Tariff, Original Volume 1, proposed to be effective 2/15/08.

Filed Date: 12/20/2007.

Accession Number: 20071220–4010.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–138–000.

Applicants: Northern Natural Gas Company.

Description: Petition of Northern Natural Gas Company for a Limited Waiver of Tariff Provisions.

Filed Date: 12/21/2007.

Accession Number: 20071226–0084.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–139–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits schedules which reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized during the period of 7/1/07–12/31/07.

Filed Date: 12/28/2007.

Accession Number: 20071231–0194.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–140–000.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits the annual reconciliation filing pursuant to Section 35 of the Crediting of Imbalance Revenue of its FERC Gas Tariff, Fourth Revised Volume 1-B.

Filed Date: 12/28/2007.

Accession Number: 20071231–0193.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–141–000.

Applicants: TransColorado Gas Transmission Company.

Description: TransColorado Gas Transmission LLC submits First Revised Sheet 242 to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/07.

Filed Date: 12/28/2007.

Accession Number: 20071231–0195.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–142–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits 1st Rev.

Second Revised Sheet 21 *et al.* to FERC Gas Tariff, Second Revised Volume 1-A.

Filed Date: 12/28/2007.

Accession Number: 20071231–0196.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–143–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Company, LLC submits the Annual Flow through Crediting Mechanism for the period November 2006–October 2007.

Filed Date: 12/28/2007.

Accession Number: 20071231–0197.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–144–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corp submits Third Revised Sheet 5 to FERC Gas Tariff, Original Volume 1 pursuant to the Commission's Order.

Filed Date: 12/21/2007.

Accession Number: 20071231–0198.

Comment Date: 5 p.m. Eastern Time on Friday, January 4, 2008.

Docket Numbers: RP08–145–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits Eighth Revised Sheet 162.01 *et al.* to FERC Gas Tariff, Second Revised Volume 1, effective 2/1/08.

Filed Date: 12/28/2007.

Accession Number: 20071231–0199.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–146–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits the Annual Accounting Report Cash-out Mechanism Account Fuel Mechanism Balancing Tools Account for the period of August 2006–July 2007.

Filed Date: 12/28/2007.

Accession Number: 20071231–0200.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: RP08–147–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corp submits the Interruptible Transportation Revenue Sharing Report for credit on the invoice for December service for the Accrual Period of 11/1/06 to 10/31/07.

Filed Date: 12/31/2007.

Accession Number: 20071231–0201.

Comment Date: 5 p.m. Eastern Time on Monday, January 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–146 Filed 1–8–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0547; FRL–8344–6]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0547. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. EUP

EPA has issued the following EUP:

71693–EUP–2. Issuance. Arizona Cotton Research and Protection Council, 3721 East Wier Avenue, Phoenix, AZ 85040–2933. This EUP allows the use of a total of 240,000 pounds of the antifungal agent containing approximately 1.92 pounds of the active ingredient, *Aspergillus flavus* AF36 on 24,000 acres of corn over the entire three year period to evaluate the control of aflatoxin-producing colonies of *Aspergillus flavus* and concomitant reduction of aflatoxin on corn. The program is authorized only in the States of Arizona (3,000 acres per year) and Texas (5,000 acres per year). The EUP is effective from January 4, 2008 to January 4, 2011.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 26, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–185 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 10, 2008, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 13, 2007.

B. New Business

- Review of Insurance Premium Rates.

Dated: January 3, 2008.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E8–206 Filed 1–8–08; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011117–044.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore PTE LTD.; CMA-CGM, S.A.; Compagnie Maritime Marfret S.A.; Hamburg-Süd; Hapag-Lloyd AG; U.S. Lines Limited; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Safmarine Container Lines NV as a party, removes reference to Hamburg-Süd's former trade name, and clarifies the application of the agreement's authority.

Agreement No.: 011275–024.

Title: Australia and New Zealand/United States Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore PTE LTD.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Safmarine Container Lines NV as a party to the agreement.

By order of the Federal Maritime Commission.

Dated: January 4, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–198 Filed 1–8–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant:

Dependable Worldwide Express, LLC, 3915 Allendale Avenue, Oakland, CA 94619. Officer: Julie Lu, Member (Qualifying Individual).

La Republica Cargo Express Corp., 30 Lawrence Street, Yonkers, NY 10705. Officer: Edgar J. Camacho, President (Qualifying Individual).

Guzal Cargo Express Corp., 5561 NW 72nd Avenue, Miami, FL 33166. Officer: Herman D. Hoyos, President (Qualifying Individual).

PJC Freightways, Inc., 7900 NW. 68th Street, Miami, FL 33166. Officer: Antonio B. Franca, President (Qualifying Individual).

Curiel International Logistics LLC, 1 Harborside Place, Ste. 322, Jersey City, NJ 07311. Officer: Cesar A. Curiel, President (Qualifying Individual).

Global Tranz Enterprises, LLC dba Carrierrate.com, 18401 North 25th Avenue, Ste. D-E, Phoenix, AZ 85023. Officers: Steve R. Bowman, CSO/Manager (Qualifying Individual). Andrew J. Leto, Manager.

ALT Intermodal Inc. dba CEBU International Logistics, 6233 San Leandro Street, Oakland, CA 94621. Officers: Noel Allosa, Vice President (Qualifying Individual). Luis Alvares, CEO.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Total Transportation Services Worldwide, LLC, 879 W. 190th Street, Ste. 920, Gardena, CA 90248. Officers: Nobuyuki Suzuki, President (Qualifying Individual). Dennis Farnsworth, Vice President.

V Logistics Inc., 1001 Nicholas Blvd., Unit A, Elk Grove Village, IL 60007. Officers: Kin C. Leung, Secretary (Qualifying Individual). Anne Lai, President.

Borderline Shipping Inc., 4415 Metro Parkway, #110, Ft. Myers, FL 33916. Officers: Edson Araujo, Vice President (Qualifying Individual). Marcelo S. Moura, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

ITW International, Inc., 879 W. 190th Street, Ste. 438, Torrance, CA 90248. Officer: Jyhren J. Kuo, President (Qualifying Individual).

Brand Logistix LLC, 5101 Buffington Road, Ste. 3448, College Park, GA 30349. Officers: Brenda Alexander, President (Qualifying Individual). Randy H. Tagoe, CEO.

Dated: January 4, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–197 Filed 1–8–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), January 22, 2008.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the December 17, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Legislative Report.
3. Quarterly Reports.
   a. Investment Performance and Policy Review.
   b. Vendor Financial Reports.
4. Audit Status Report.
5. Review of 2008 Board Meeting Calendar.

Parts Closed to the Public

6. Personnel.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 7, 2008.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 08–61 Filed 1–7–08; 12:08 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Office of Refugee Resettlement Individual Development (IDA) Program Post-Asset Acquisition Data Collection.

OMB No.: New Collection.

Description: In October 1999 the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), began funding Individual Development Account (IDA) programs, a discretionary grant program authorized by Section 412(c)(1)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(A)), for low-income refugees. IDAs are a tool that enable low-income families to save, build assets, and enter the financial mainstream. Since the inception of the ORR IDA Program, data have never been collected from the former refugee participants to assess how they are doing since they acquired their asset (e.g., home, small business, car, post-secondary education/vocational training/recertification, computer, or home renovation).

This report will be used to document the experiences of the refugees and their families since they acquired their asset. There is much to be learned from the experiences of IDA programs serving refugees. ORR has requested this report in order to document long-term program outcomes and understand what happens after a participant obtains his/her asset. The lessons drawn will not only have direct implications for ORR, but also for currently funded refugee IDA grantees. The broader asset field will also benefit from learning about the achievements and challenges of a program that serves refugees.

Respondents: Former ORR IDA participants who acquired an asset through the ORR IDA Program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Former IDA Participants Data	200	1	.30	60
Former IDA Grantee Agencies	48	1	10	480

Estimated Total Annual Burden Hours: 540.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 2, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 08–24 Filed 1–8–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Reunification Procedures for Unaccompanied Alien Children.

OMB No.: 0970–0278.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno Settlement Agreement* No. CV85–4544–RJK (C.D. Cal. 1997).

The proposed information collection requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Sponsor's Agreement to Conditions of Release, Verification of Release, Family Reunification Packet, and the Authorization for Release of Information.

Respondents: Sponsors requesting release of unaccompanied alien children to their custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sponsor's Agreement to Conditions of Release	4,288	2	.0835	716
Verification of Release	4,288	1	.167	716
Family Reunification Packet	4,288	18	.0416	3,211
Authorization for Release of Information	4,288	15	.0222	1,428

Estimated Total Annual Burden Hours: 6,071.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 3, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 08–25 Filed 1–8–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Performance Measurement On-line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-line Tool was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Training Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on a semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the Program Assessment Rating Tool (PART), an OMB-mandated reporting system that focuses on quantifiable outcome measures, directly related to the expected social impact or public benefit of each federal program. The Children's Bureau will use the aggregated data collected under each federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: All competitive discretionary grant programs funded by the Children's Bureau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-line Tool.	Abandoned Infants Assistance Program. Range 30–36	2 per fiscal year	1 hour per response	Range 60–72.
Performance Measurement On-line Tool.	Infant Adoption Awareness Program. Range 4–6	2 per fiscal year	1 hour per response	Range 8–12.
Performance Measurement On-line Tool.	Adoption Opportunities Program. Range 45–55	2 per fiscal year	1 hour per response	Range 90–110.
Performance Measurement On-line Tool.	Child Abuse and Neglect Program. Range 25–32	2 per fiscal year	1 hour per response	Range 50–64.
Performance Measurement On-line Tool.	Child Welfare Training Program. Range 45–55	2 per fiscal year	1 hour per response	Range 90–110.

Estimated Total Annual Burden Hours: Range 298–368.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, ATTN: ACF Reports Clearance Office. The e-mail address is: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comment on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility and clarity of information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of publication.

January 3, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 08–26 Filed 1–8–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: LIHEAP Quarterly Allocation Estimates, Form ACF–535.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates, ACF Form-535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance Program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are grantees' estimates of obligations they expect to make each quarter for the upcoming fiscal year for the LIHEAP program. This is the only method used to request anticipated distributions of the grantees' LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantees' anticipated needs. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: State Governments, Tribal Governments that receive over $1 million annually, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Quarterly Allocation Estimates, ACF–535	55	1	.25	13.75

Estimated Total Annual Burden Hours: 13.75.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects for the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 3, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 08–27 Filed 01–08–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan, Annual Progress and Services Report, the CFS–101, Parts I, II and III, and Caseworker Visits.

OMB No.: 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act (the Act), States, Territories, and Tribes are required to submit a Child and Family Services Plan (CFSP). The CFSP lays the groundwork for a system of coordinated, integrated, and culturally relevant family services for the subsequent five years (45 CFR 1357.15(a)(1)). The CFSP outlines initiatives and activities the State, Tribe, or Territory will carry out in administering programs and services to promote the safety, permanency, and well-being of children and families. By June 30 of each year, States, Territories, and Tribes are also required to submit an Annual Progress and Services Report (APSR) and a financial report called the CFS–101.

The APSR is a yearly report that discusses progress made by a State, Territory, or Tribe in accomplishing the goals and objectives cited in its CFSP (45 CFR 1357.16(a)). The APSR contains new and updated information about service needs and organizational capacities throughout the five-year plan period.

The CFS–101 has three parts. Part I is an annual budget request for the upcoming fiscal year. Part II includes a summary of planned expenditures by program area for the upcoming fiscal year, the estimated number of individuals or families to be served, and the geographical service area. Part III includes actual expenditures by program area, numbers of families and individuals served by program area, and the geographic areas served for the last complete fiscal year.

The Child and Family Services Improvement Act of 2006 amended Title IV–B, subparts 1 and 2, add a number of requirements that affect reporting through the APSR and the CFS–101. Of particular note, the law added a provision requiring States (excluding Tribes and Territories) to report data on caseworker visits (section 424(e) of the Act). States must provide annual data on 1) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child, and 2) the percentage of the visits that occurred in the residence of the child. In addition, by June 30, 2008, States must set target percentages and establish strategies to meet the goal that, by October 1, 2011, at least 90 percent of the children in foster care are visited by their caseworkers on a monthly basis and that the majority of these visits occur in the residence of the child (section 424(e)(2)(a) of the Act).

Respondents: States, Territories, and Tribes must complete the CFSP, APSR, and CFS–101. Tribes and Territories are exempted from the monthly caseworker visits reporting requirement of the APSR. There are approximately 223 Tribal entities that are eligible for IV–B funding. There are 52 States and Territories that must complete the CFSP, APSR, and CFS–101. There are a total of 275 possible respondents.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per espondent	Average burden hours per espondent	Total burden hours (per year)
CFSP	275	1	110.25	30,319/5 years = 6,064
APSR	275	1	74.58	20,510
CFS–101, Parts I, II, and III	275	1	4.38	1,205
Caseworker Visits	52	1	99.33	5,165

Estimated Total Annual Burden Hours: 32,944.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 3, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 08–28 Filed 1–8–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007P–0295]

Determination That INDERAL (Propranolol Hydrochloride) Tablets, 10 Milligrams, 20 Milligrams, and 90 Milligrams Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that INDERAL (propranolol hydrochloride (HCl)) Tablets, 10 milligrams (mg), 20 mg, and 90 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to the drug products, and it will allow FDA to approve ANDAs for propranolol HCl tablets, 10 mg, 20 mg, and 90 mg as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that referred to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that the listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug. FDA may not approve an ANDA that does not refer to a listed drug.

INDERAL (propranolol HCl) Tablets, 10 mg, 20 mg, 40 mg, 60 mg, 80 mg, and 90 mg, are the subject of approved NDA 16–418 held by Wyeth Pharmaceuticals, Inc. (Wyeth). INDERAL is indicated in the treatment of hypertension, angina pectoris, atrial fibrillation, myocardial infarction, migraine headaches, essential tremors, hypertrophic subaortic stenosis, and pheochromocytoma. In tablet form, INDERAL is currently available in 40-, 60-, and 80-mg strengths. Wyeth discontinued marketing the tablet form in the 10-, 20-, and 90-mg strengths, and those products were moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book.

In a citizen petition dated July 20, 2007 (Docket No. 2007P–0295/CP1), submitted under 21 CFR 10.25(a) and 10.30, Regulus Pharmaceutical Consulting, Inc., requested that the agency determine, as described in § 314.161, whether INDERAL (propranolol HCl) Tablets, 10 mg and 20 mg, were withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that INDERAL Tablets, 10 mg and 20 mg, were withdrawn from sale as a result of safety or effectiveness concerns. Although the citizen petition did not address the 90-mg strength, FDA must make a determination regarding whether that strength was withdrawn for safety or efficacy reasons because generic versions of that strength are currently being marketed.

We have reviewed our records and determined that INDERAL Tablets, 10 mg, 20 mg, and 90 mg, were not withdrawn from sale for reasons of safety or effectiveness. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that INDERAL Tablets, 10 mg, 20 mg, and 90 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA has determined that, for the reasons outlined in this notice, INDERAL (propranolol HCl) Tablets, 10 mg, 20 mg, and 90 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list INDERAL (propranolol HCl) Tablets, 10 mg, 20 mg, and 90 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to INDERAL (propranolol HCl) Tablets, 10 mg, 20 mg, and 90-mg, may be approved by the agency as long as they comply with relevant legal and regulatory requirements. If FDA determines that labeling for this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: January 2, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–190 Filed 1–8–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA No. 225–07–8004]

Memorandum of Understanding Between the Food and Drug Administration and Regents of the University of California

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and

the University of California, Davis campus (UC Davis). The purpose of this MOU is to establish terms of collaboration between FDA and UC Davis, focused primarily but not exclusively, in the areas of the safety and security of foods and cosmetics, animal feeds and veterinary products. Beyond the collaborations in the traditional academic programs for training, research and outreach, this MOU will also include UC Davis extended partnerships such as the Western Institute for Food Safety and Security, and the Center for Produce Safety.

DATES: The agreement became effective December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mary I. Poos, Officeof the Commissioner, Office of the Chief Medical Officer (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2825.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

FDA Record No. 225-07-8004

MEMORANDUM OF UNDERSTANDING
between
THE UNITED STATES FOOD AND DRUG ADMINISTRATION
and the
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

I. PURPOSE

The United States Food and Drug Administration (FDA) and The Regents of the University of California, on behalf of the University of California, Davis campus (UCD) (the Parties) have a shared interest in scientific progress in the diverse disciplines that directly and indirectly affect human and animal health. The Parties also endorse scientific training for faculty, students and staff to foster a well-grounded foundation in interdisciplinary fields in which academia and government share mutual interests.

This Memorandum of Understanding (MOU) establishes terms of collaboration between FDA and UCD to support these shared interests that can be pursued through a variety of programs including collaborative research, public outreach, extension activities, training, and exchange of scientists and staff, including sabbaticals, postdoctoral fellowships, and student internships.

II. BACKGROUND

FDA is authorized to implement the Federal Food, Drug, and Cosmetic Act (the Act) as amended (21 U.S.C. 301). In fulfilling its responsibilities under the Act, FDA among other things, directs its activities toward protecting and promoting the public health by ensuring the safety and security of foods and cosmetics and of animal feeds and veterinary products (Appendix A). To accomplish its mission, FDA must stay abreast of the latest developments in research and also communicate with stakeholders about complex scientific and public health issues. Increased development of research, education, and outreach partnerships with UCD will greatly contribute to FDA's mission.

UCD is one of the nation's top public research universities and is part of one of the world's pre-eminent public university systems. Through a distinctive tradition of core-discipline excellence, interdisciplinary collaborations and productive partnerships, UCD teaches students to think critically, objectively and creatively and to be lifelong learners, engaged leaders and productive citizens; pursues research to advance knowledge and to address state, national and global challenges; and serves the public through the generation, broad dissemination and application of knowledge. Beyond the traditional academic programs, UCD is home to extended partnerships such the Western Institute for Food Safety and Security and the Center for Produce Safety that conduct research, training, and outreach focused on issues such as produce safety and security. The scientific, public health and policy expertise within FDA provide opportunities for collaborations that support the UCD mission and strategic themes to provide access to

high-quality education, research discovery, and knowledge-based services responsive to both the promises and demands of the state and the nation in the new century.

III. SUBSTANCE OF THE AGREEMENT

This MOU forms the basis for development of scientific collaborations, outreach, and educational initiatives and intellectual partnerships between FDA and UCD. The types of activities expected to develop from this MOU include:

- Exchanges between university faculty and staff and FDA scientists and staff;
- Educational opportunities for qualified students (graduate and undergraduate), staff members, and faculty members in the Parties' laboratories, classrooms and offices;
- Joint meetings for education and research;
- Research collaborations;
- Sharing of unique facilities and equipment for increased cost efficiencies for scientific endeavors.

Under this MOU, joint efforts will be undertaken to obtain grants and other extramural funds to support collaborative research and training as permitted under appropriate statutory authority. Before any specific collaboration is initiated or implemented, the parties shall identify priorities and topics of mutual interest, and develop separate, written agreements for collaboration and sharing of resources. The terms and conditions of any such agreements will be in accordance with the applicable federal law and regulations and shall be negotiated and executed by appropriate representatives of institutions within UCD and FDA. Where applicable, these agreements shall incorporate by reference this MOU.

A. FDA agrees to:

For programs agreed to in writing, and in advance by both parties, FDA may, as permitted by applicable statutes and regulations and subject to the availability of funds, and as it deems appropriate, offer UCD the following:

- Laboratory and/or office space in support of activities under this agreement.
- Access to facilities and equipment, including necessary training and guidance, in so far as such use does not interfere with the primary mission of either party.
- Active participation in establishing collaborative research, education, extension and outreach efforts with faculty, students, and staff within UCD institutions.
- Continuing and frequent communication with faculty and staff.
- Openness and welcome to faculty, staff, and students wishing to visit FDA laboratories.
- Promulgation and communication of identified collaborative efforts through appropriate means.

B. University of California, Davis agrees to:

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For programs agreed to in advance by both parties, UCD may offer FDA the following:

- Laboratory and/or office space in support of activities under this agreement.
- Access to facilities and equipment, including necessary training and guidance, in so far as such use does not interfere with the primary mission of either party.
- Active participation in establishing collaborative research, education, extension and outreach efforts with FDA scientists and staff.
- Continuing and frequent communication with FDA scientists and staff.
- Openness and welcome to FDA scientists and staff wishing to visit relevant UCD programs and laboratories.
- Promulgation and communication of identified collaborative efforts through appropriate means.

C. Additionally it is agreed that:

1. Rights to any inventions resulting from collaborative research will be solely-owned by the party if invented solely, or jointly-owned if invented jointly by the parties.

2. Institutions within UCD and FDA may decide to enter into Cooperative Research and Development Agreements (CRADA) specific to particular collaborative projects. The terms of such CRADAs will address Intellectual Property rights.

3. Proprietary and/or nonpublic information may not be disclosed under this MOU, unless such disclsoure is governed by appropriate confidentiality disclosure agreements, and unless such disclosure is permitted by law.

4. Each party shall comply with the other party's security procedures and policies regarding access to and use of facilities. Either party may restrict or limit access to its property and facilities, at any time, for any reason. UCD individuals participating in activities under this MOU on FDA property will comply with all applicable federal statutes and regulations.

5. It is recognized that from time to time FDA and entities within UCD will be sharing in expenses and may require compensation of either party by the other. As research projects are developed, details of how costs are to be shared will be agreed to in advance under other contractual mechanisms as appropriate and in compliance with all applicable federal requirements.

6. To the extent that Federal employees are involved in the implementation of specific projects, federal employee participation will be governed by all applicable statutes, regulations and policies on interactions with outside organizations, and reviewed for permissibility by the appropriate authority within the employee's agency on a case-by-case basis.

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7. This agreement may be amended any time upon mutual agreement between the parties in writing.

IV. FINANCES AND RESOURCES

The foregoing represents the broad outline of the Parties' present intent to enter into specific agreements for collaborative efforts in intellectual areas of mutual interest to FDA and the entities within UCD. It does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and funds. This MOU does not affect or supersede any existing or future agreements or arrangements among the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this MOU.

V. CONTACTS

The individuals to whom inquiries to FDA should be addressed are:

Mary I. Poos, Ph.D.
Director of Academic and Intellectual Partnerships
Office of the Commissioner
Food and Drug Administration
PKLN 13B-17, HF-10
5600 Fishers Lane
Rockville MD 20857
301-827-2825
Mary.Poos@fda.hhs.gov

Elizabeth Calvey, Ph.D.
Team Leader, Liaison and Partnership Team
Center for Food Safety and Applied Nutrition
Food and Drug Administration
5100 Paint Branch Parkway (HFS-006)
College Park, MD 20740
301-436-1981
Elizabeth.Calvey@fda.hhs.gov

Marlene Wekell, Ph.D.
Director, Office of Research
Center for Veterinary Medicine
Food and Drug Administration
8401 Muirkirk Road (HFV-500)
Laurel, MD 20708
301-210-4136
Marlene.Wekell@fda.hhs.gov

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Mark Roh
Deputy Regional Director
Office of Regulatory Affairs
Food and Drug Administration
1301 Clay Street (HFR-PA1)
Oakland, CA 94612
510-637-3960
Mark.Roh@fda.hhs.gov

The individual to whom all inquires to UCD should be addressed is:

Ahmad Hakim-Elahi, Ph.D., J.D.
Director of Sponsored Programs
Office of Research
University of California, Davis
1850 Research Park Drive, Suite 300
Davis, CA 95618
(530) 747-3825

VI. PERIOD OF AGREEEMENT

This MOU becomes effective upon signing by both parties and will continue in effect for five (5) years and may be renewed upon mutual agreement of the Parties.

VII. REGULATIONS

This MOU and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which FDA, UCD and the entities within UCD operate.

AGREED TO:

UNIVERSITY OF CALIFORNIA, DAVIS

BY: _____ October 26, 2007
Signature of authorized representative Date

Lynne U. Chronister
Associate Vice Chancellor for Research

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 12/7/07
Signature of authorized representative Date

Janet Woodcock, M.D.
Deputy Commissioner and Chief Medical Officer

FDA Record No. 225-07-8004

APPENDIX A

FDA Centers/Offices

The U.S. Food and Drug Administration (FDA) is comprised of product-oriented centers (Center for Food Safety and Applied Nutrition, Center for Veterinary Medicine, Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health), a nationwide field force (Office of Regulatory Affairs), a cross-cutting research center (National Center for Toxicology Research), and the Office of the Commissioner. FDA is a scientific regulatory agency responsible for the safety of the nation's domestically produced and imported foods, cosmetics, animal feeds, veterinary products, drugs, biologics, medical devices, and radiological products. It is one of the oldest federal agencies whose primary function is consumer protection. The agency touches and directly influences the lives of everyone in the United States. FDA is recognized internationally as the leading food and drug regulatory agency in the world. Many foreign nations seek and receive FDA's help in improving and monitoring the safety of their products. FDA is part of the Executive Branch of the United States Government within the Department of Health and Human Services (DHHS) and the Public Health Service (PHS).

Any FDA center may participate in this MOU as appropriate. However, it is expected that initial interactions will primarily be with:

Center for Food Safety and Applied Nutrition (CFSAN)-
CFSAN, in conjunction with the Agency's field staff, is responsible for promoting and protecting the public's health by ensuring that the nation's food supply is safe, secure, sanitary, wholesome, and properly labeled, and that cosmetic products are safe, secure, and properly labeled.

Center for Veterinary Medicine (CVM)-
CVM is a consumer protection organization that fosters public and animal health by approving safe and effective products for animals and by enforcing applicable provisions of the Federal Food, Drug, and Cosmetic Act and other authorities.

Office of Regulatory Affairs (ORA)-
ORA is the lead office for all Field activities of the Food and Drug Administration including inspection of food, feed, and medical product manufacturing, transport and storage facilities for compliance with exiting law; as well as enforcement activities. It includes the Office of Criminal Investigations

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APPENDIX B

University of California, Davis

UCD is one of the nation's top public research universities. Through a distinctive tradition of core-discipline excellence, interdisciplinary collaborations and productive partnerships, UCD teaches students to think critically, creatively and to be lifelong learners, engaged leaders and productive citizens; pursues research to advance knowledge and to address state, national and global challenges; and serves the public through the generation, dissemination and application of knowledge. The primary core of UCD is comprised of the College of Agricultural and Environmental Sciences, College of Biological Sciences, College of Engineering, and College of Letters and Sciences, along with five professional schools, School of Veterinary Medicine, School of Medicine, School of Law, School of Education, and the Graduate School of Management. Complimenting this consortium of Colleges and Professional Schools is a long list of mission-specific Institutes and Centers that enhance the teaching, research, outreach, and service that is conducted by UCD. These Institutes and Centers, such as the Western Institute of Food Safety and Security, allow UCD to quickly and effectively address a wide range of societal concerns and issues, such as emerging threats to our nation's food safety and security. Lastly, as a Land Grant University, UCD helps comprise the Division of Agriculture and Natural Resources which is a statewide network of University of California researchers and educators dedicated to the creation, development and application of knowledge in agricultural, natural and human resources.

Any College, Professional School, Center, Institute, or other such organized research unit may participate in this MOU as appropriate. We anticipate that initial interaction will quickly occur with academic entities that are engaged in conducting research, education, outreach, and service in area of food safety and security anywhere along the farm-to-fork continuum for either plant- or animal-foods of origin. For example:

Western Institute of Food Safety and Security

Specific Departments within the School of Veterinary Medicine (Population Health and Reproduction; Medicine and Epidemiology)

Specific Departments within the College of Agricultural and Environmental Sciences (Nutrition; Plant Sciences; Land, Air, and Water Resources; Food Science and Technology)

Specific Departments within the College of Engineering (Biological and Agricultural Engineering)

Specialists of the Division of Agriculture and Natural Resources

A sampling of specific centers, institutes, organized research units, central facilities and resources at the University of California, Davis that may participate in this MOU follows:

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College of Agricultural and Environmental Sciences Agricultural Experiment Station
- Agricultural & Environmental Informatics Facility
- Agricultural Sustainability Institute
- California Crop Improvement Association
- California Institute of Food and Agricultural Research
- Center for Vector-Borne Disease Research
- Foundation Plant Services
- Foundation Seed Service
- Genomics Facility
- Greenhouses
- Long -Term Research on Agricultural Systems
- Robert Mondavi Institute for Wine and Food Science
- Seed Biotechnology Center
- Research and Information Centers
  - Center for Agronomic Crops
  - Center for Consumer Research
  - Dairy Research and Information Center
  - Fruit & Nut Research and Information Center
  - Ornamental Horticulture Research and Information Center
  - Postharvest Technology Research and Information Center
  - Seed Biotechnology Center
  - Weed Research and Information Center
  - Vegetable Research and Information Center

School of Veterinary Medicine
- California Animal Health & Food Safety Laboratory System
- Center for Food Animal Health
- Center for Laboratory Animal Science
- Center for VectorBorne Diseases
- Comparative Pathology Laboratory
- Dairy Food Safety Laboratory
- International Laboratory of Molecular Biology for Tropical Diseases
- Veterinary Genetics Laboratory
- Western Institute for Food Safety and Security

Central Facilities
- Controlled Environment Facility
- Crocker Nuclear Laboratory
- McClellan Nuclear Radiation Center
- Molecular Structure Facility
- Nuclear Magnetic Resonance Facility

Interdisciplinary Research & Teaching Programs
- Agricultural Health and Safety Center
- Agricultural Issues Center

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Biotechnology Program
California Institute of Food and Agricultural Research
CalSpace: Center of Excellence Agriculture, Natural Resources, Environment
Center for Animal Welfare
Center for Ecological Health Research
Center for Environmental Health Sciences
Center for Health and the Environment
Dairy Research and Information Center
Genome Center
Nanomaterials in the Environment, Agriculture and Technology
Partnership for Plant Genomics Education
Small Farm Center
Statewide Integrated Pest Management Program
Sustainable Agriculture Farming Systems Project
Sustainable Agricultural Research and Education Program
Toxic Substances Research and Teaching Program
UC Groundwater Cooperative Extension Program
UC Biotechnology Research and Education Program
UC Statewide Integrated Pest Management Program
UC Toxic Substances Research and Teaching Program
Western Center for Agricultural Health and Safety

[FR Doc. 08–30 Filed 1–8–08; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Patient Oriented and Career Enhancement Awards for Stem Cell Research.

Date: February 20–21, 2008.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathobiology Program Project.

Date: February 21, 2008.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Point Sheraton BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Charles Joyce, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Coagulation Program Project.

Date: February 22, 2008.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Point Sheraton BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Charles Joyce, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Resource Related Research Project.

Date: February 28, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keary A Cope, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–41 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Behavioral Cardiology Program Project.

Date: February 7, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Holly Patton, PhD., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattonh@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Microorganism Study.

Date: February 8, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Vascular Disease Imaging.

Date: February 15, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–49 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 24–25, 2008.

Closed: January 24, 2008, 8:30 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: January 25, 2008, 8:30 a.m. to adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 &E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's homepage: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 28, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–40 Filed 1–8–08; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ISTART Review.

Date: February 1, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 200, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA F New Investigator R01 Member Conflicts.

Date: February 15, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–F New Investigator R01s Sep.

Date: February 15, 2008.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: March 4–5, 2008.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: March 4–5, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Kesinee Nimit, MD., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 11–13, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: March 13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Gerald L. McLaughlin, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–43 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Synthesis and Distribution of Drugs of Abuse and Related Compounds.

Date: January 23, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Drug Abuse Screening, Assessment, Patient-Treatment Matching Technologies for Use in Primary Care.

Date: January 24, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kristen V. Huntley, PhD., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@mail.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Development of Nanoscience-based Probes, Delivery Systems, and Therapies for Substance Use Disorders.

Date: January 30, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–44 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Family Alzheimer's Network

Date: January 28, 2008.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, *haddenw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

December 28, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–46 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Mental Health Services in Non-Specialty Settings, February 12, 2008, 8 a.m. to February 13, 2008, 5 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC 20037 which was published in the **Federal Register** on December 26, 2007, 72FR73034.

The meeting will be held at the same place and time, but will only be held on February 12, 2008. The meeting is closed to the public.

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–47 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 7–8, 2008.

Open: February 7, 2008, 10:30 a.m. to 4:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research, NINDS; Overview of the NINDS intramural program, and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 7, 2008, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 8, 2008, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–48 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Animal Resource.
Date: February 11, 2008.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 7201 Wisconsin Ave., Bethesda, MD 20892.
Contact Person: Wilbur C. Hadden, PhD., Health Science Administrator, National Institute On Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, *haddenw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–50 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee, NIA–B Committee Review Meeting.
Date: February 7, 2008.
Time: 11 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–51 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.
Date: January 28, 2008.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Parc Fifty Five Hotel, 55 Cyrill Magnin Street, San Francisco, CA 94102.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, 301–435–2211, *klosekm@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Learning and Memory Neuroscience.
Date: January 29, 2008.
Time: 3:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–435–1250, *bishopj@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Skeletal Biology Development and Disease Study Section.
Date: February 3–5, 2008.
Time: 9 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Marina Del Rey Marriott, 4100 Admiralty Way, Marina Del Rey, CA 90292.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, 301–435–1787, *chenp@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group Tumor Cell Biology Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22101.
Contact Person: Angela Y. Ng, PHD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817) Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: February 5–6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Denise Wiesch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.
Date: February 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Steven J. Zullo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology Small Business.
Date: February 6, 2008.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Boris P. Sokolov, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.
Date: February 7–8, 2008.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Marriott, Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Hepatobiliary Pathophysiology Study Section.
Date: February 11–12, 2008.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.
Date: February 11–12, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Denise Shaw, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Chief Psychopathology and Developmental Disabilities Study Section.
Date: February 11–12, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Washington, DC City Center, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Musculoskeletal, oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.
Date: February 11–12, 2008.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.
Date: February 11–12, 2008.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.
Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.
Date: February 12, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1115, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.
Date: February 12, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.
Date: February 12–13, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301)–451–1375, *ot3d@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurodifferentiation, Plasticity, and Regeneration Study Section.
Date: February 12–13, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Waterfront Plaza Hotel, 10 Washington Street, Oakland, CA 94607.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Neurodegeneration Study Section.
Date: February 12–13, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Carole L. Jelsema, PhD, Chief and Science Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—A Study Section.
Date: February 12, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.
Date: February 12, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.
Date: February 12–13, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.
Date: February 12–13, 2008.
Time: 8:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Child Psychopathology.
Date: February 12, 2008.
Time: 5 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Washington, DC City Center, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy Studies.
Date: February 13, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mental Health Genetics and Epidemiology.
Date: February 13, 2008.
Time: 1 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892 301–435–1262, *chanetsaf@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Imaging Technology Study Section.
Date: February 13–15, 2008.
Time: 8 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892 301–435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.
Date: February 13, 2008.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects–1 Study Section.
Date: February 14, 2008.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Manana Sukhareva, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.
Date: February 14–15, 2008
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Cardiovascular and Sleep Epidemiology Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: J. Scott Osborne, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences integrated Review Group, Hypertension and Microcirculation Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and neuroprosthetics.
Date: February 14–15, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: George Ann Mckie, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892 301–435–1049, *mckiegeo@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development–1 Study Section.
Date: February 14–15, 2008.
Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Cathy Wedeen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1191, *wedeenc@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: February 14–15, 2008.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: February 14–15, 2008.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: February 14–15, 2008.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301)–435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Death and Neurodegeneration.

Date: February 14, 2008.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Yakovlev, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic-Industry Partnership in Cancer Imaging.

Date: February 15, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Research on Conversion to Psychosis.

Date: February 15, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–42 Filed 1–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vision and Eye Movement.

Date: January 30, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Aging Systems and Geriatrics Study Section.

Date: February 4–5, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Francois Boller, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7848, Bethesda, MD 20892, 301–435–1019, *bollerf@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: February 6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: February 6–7, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: February 6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Harbor Magic Hotels, 722 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892–7844, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development–2 Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m..
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Neelakanta Ravindranath, PhD, MVSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindm@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function D Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Long Beach & Executive Meeting Center, 701 West Ocean Boulevard, Long Beach, CA 90831.
Contact Person: James W. Mack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, 301–435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1726, *lamontan@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B. Study Section.
Date: February 7–9, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Harbor Magic Hotels, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Hematopoiesis Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1119, *hanspalm@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Nuclear Dynamics and Transport.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn San Francisco-Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *binia@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cell Structure and Function Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: The Serrano Hotel, 405 Taylor Street, Golden Gate, San Francisco, CA 94102.
Contact Person: Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913. *latonia@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites-Downtown Washington, DC, 1250 22nd Street, NW., Washington, DC 20037.
Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC, 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Deborah L. Lewis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301–435–1224, *lewisdeb@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Tera Bounds, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.
Date: February 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Clinical and Integrative Diabetes and Obesity Study Section.

Date: February 7–8, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–435–1154, *sheardn@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function C Study Section.

Date: February 7–8, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance-Long Beach, 111 E. Ocean Boulevard, Long Beach, CA 90802.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, 301–435–1153, *revzina@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: February 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community Influences on Health Behavior.

Date: February 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: February 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301–435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: February 7–8, 2008.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Injury and Neurovascular Pathologies Study Section.

Date: February 7–8, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: February 7–8, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neuroendocrinology and Neuroimmunology.

Date: February 7, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian Hoshaw, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 8, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, Tyson's Corner, 1700 Tyson's Boulevard, McLean, VA 22102.

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research on Ethical Issues in Human Studies.

Date: February 8, 2008.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Adult Psychopathology and Disorders of Aging.

Date: February 8, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Serrano Hotel, 405 Taylor Street, Golden Gate, San Francisco, CA 94102.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–878, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–45 Filed 1–8–08 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2006–0073]

Notice to Agricultural Facilities About Requirement To Complete Chemical Security Assessment Tool Top-Screen

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS or Department) is publishing a letter that it issued on December 21, 2007. Through this letter, the Department is granting a time extension for farmers and other agricultural users who are required to submit information (known as the Chemical Security Assessment Tool Top-Screen) under federal chemical security regulations.

DATES: Effective December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Chemical Security Compliance Division, Department of Homeland Security, 703–235–5263.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007 provided the Department of Homeland Security (DHS or Department) with authority to promulgate ''interim final regulations'' for the security of certain chemical facilities in the United States. *See* Pub. L. 109–295, sec. 550. On December 28, 2006, the Department issued an Advance Notice of Rulemaking seeking comment on the significant issues and regulatory text (see 71 FR 78276), and on April 9, 2007, the Department published an Interim Final Rule establishing anti-terrorism standards for certain chemical facilities (*see* 72 FR 17688). The Interim Final Rule was effective June 8, 2007.

On November 20, 2007, the Department issued a Final Rule for Appendix A to the Chemical Facility Anti-Terrorism Standards (*see* 72 FR 65396). Appendix A to 6 CFR Part 27 consists of a List of Chemicals of Interest (COI) and Screening Threshold Quantities (STQs) for each chemical. Any facility that possesses or later comes into possession of any listed COI at or above the STQ must complete and submit a Chemical Security Assessment Tool Top-Screen to DHS.

This letter grants a time extension, as specified, to farmers and other agricultural users of COI for submitting Top-Screens to DHS. On December 21, 2007, the Department issued this letter to various interested parties. For purposes of clarification, this time extension does not apply to agricultural facilities that are required to submit a Top-Screen, because they possess a COI (e.g., propane) at or above the applicable STQ for use as a fuel (e.g., for heating) at such facilities.

Dear Sir or Madam:

I am writing to notify you that the Department of Homeland Security (DHS) is granting a time extension for certain facilities required to submit information under federal chemical security regulations. On April 9, 2007, DHS published the Chemical Facility Anti-Terrorism Standards Interim Final Rule (6 CFR Part 27); and on November 20, 2007, DHS published a final list of chemicals of interest, known as Appendix A. *See* 72 FR 17688 and 72 FR 65396. With the publication of the final Appendix A, all provisions of the regulations are in effect.

Upon publication of Appendix A, any facility that possesses any chemical of interest at or above the screening threshold quantity specified in Appendix A, was required to complete and submit information—called a ''Top-Screen''—to DHS by January 22, 2008. *See* 6 CFR §§ 27.200(b)(2), 27.210(a)(1)(i).

In the final Appendix A, DHS intended to limit the coverage of that requirement, as related to farmers and other agricultural users of the chemicals of interest, by revising screening thresholds and counting rules for certain chemicals. See 72 FR 65406–65407, 65415 (Nov. 20, 2007). Since publication of the final Appendix A, however, additional questions and concerns have been raised regarding the applicability of the Top-Screen requirement to agricultural facilities and operations. DHS is gathering more information about these issues in order to determine whether any modification of the Top-Screen requirements might be warranted.

In addition, the United States Congress has now passed, and the President has signed, the Department of Homeland Security Appropriations Act of 2008, which authorizes DHS to regulate the sale and transfer of Ammonium Nitrate. The law authorizes DHS to develop processes for the registration of Ammonium Nitrate purchasers and for the maintenance of relevant records. Because this law will likely cover many farmers and other agricultural operations, DHS may review its approach towards Chemicals of Interest used in agricultural operations.

Accordingly, given the nature of these agricultural operations and the circumstances described above, I am exercising my authority under 6 CFR 27.210(c) to extend the deadline for submitting Top-Screens under the following conditions:

(1) Until further notice, or unless otherwise specifically notified in writing by DHS, the Top-Screens will not be required for any facility that is required to submit a Top-Screen *solely* because it possesses any Chemical of Interest, at or above the applicable screening threshold quantity, for use—

(a) in preparation for the treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility; or

(b) during application to or treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility;

(2) This extension applies to facilities such as farms (e.g., crop, fruit, nut, and vegetable); ranches and rangeland; poultry, dairy, and equine facilities; turfgrass growers; golf courses; nurseries; floricultural operations; and public and private parks.

(3) This extension does not apply to chemical distribution facilities, or commercial chemical application services.

If you have any questions about the extension described above, please contact Dennis Deziel, Deputy Director, DHS Compliance Security Compliance Division (*dennis.deziel@dhs.gov*) or the CSAT Helpdesk at 866–323–2957 or *csat.dhs.gov*.

Robert B. Stephan,

Assistant Secretary for Infrastructure Protection, Department of Homeland Security.

[FR Doc. E8–199 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2007–0099]

Testing of Pressed and Toughened (Specially Tempered) Glassware

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice; solicitation of comments.

SUMMARY: This document proposes modifications to the standard applied by U.S. Customs and Border Protection (''CBP'') for the testing of pressed and toughened (specially tempered) glassware, as set forth in Treasury Decision (T.D.) 94–26, published in the **Federal Register** on March 22, 1994. In this regard, this document proposes revised criteria for interpreting the results obtained from the cutting test for opaque glassware and sets forth an interpretation of breakage in that test. This document also proposes to reinstate a previously used testing method, referred to as the center punch test, and sets forth a description of the center punch apparatus to be used for the proposed test. In addition, it is proposed to provide for the optional use of additional tests that would be used to verify the results obtained from the testing procedures specifically identified in this document. This document invites the public to submit comments to CBP on the proposed modifications to the standards for the testing of pressed and toughened (specially tempered) glassware.

DATES: Comments must be received on or before February 25, 2008.

ADDRESSES: You may submit comments, identified by docket number USCBP 2007–0099, by *one* of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2007–0099.

• Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this general notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted and the current testing method used by CBP will also be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of the Customs and Border Protection Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW. (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Margaret Chinn, Office of Information and Technology, Laboratories and Scientific Services, (202) 344–1566; Stephen Cassata, Office of Information and Technology, Laboratories and Scientific Services, (202) 344–1309.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of this general notice. If appropriate to a specific comment, the commenter should reference the specific portion of the general notice, explain the reason for any suggested change, and include data, information, or authority that support such recommended change.

Background

This document proposes modifications to the criteria currently utilized by U.S. Customs and Border Protection (''CBP'') to test certain glassware articles to ascertain whether they are ''pressed and toughened (specially tempered)'' for tariff classification purposes under the Harmonized Tariff Schedule of the United States (''HTSUS''). The glassware articles subject to such testing procedures are generally imported into the United States under subheadings 7013.28.05, 7013.37.05, 7013.42.10, 7013.49.10, and 7013.99.20, HTSUS. It should be noted that articles of ''safety glass, consisting of toughened (tempered) or laminated glass'' that are normally imported under heading 7007, HTSUS (e.g., architectural plate glass and vehicle windshields), are not within the purview of this notice. As such, CBP is not soliciting comments regarding the methods employed to analyze those articles.

Information regarding the apparatus used, glass sample preparation, and the actual methods employed by CBP to test glassware articles to determine whether they are pressed and toughened (specially tempered) were set forth in the **Federal Register** (59 FR 13531, March 22, 1994; see also, 59 FR 16895, April 8, 1994, correcting ''T.D. 94–25'' to ''T.D. 94–26''). Under T.D. 94–26, photographic equipment, polariscopes, tile saws (or similar table-mounted circular saws), or other apparatus and supplies, such as calipers, ovens, and water baths, may be used to test subject glassware articles. With respect to sample preparation, T.D. 94–26 provides that a representative number of samples should be analyzed but recognizes the possibility that only one sample may be available for testing.

The analysis method to be used for the testing of pressed and toughened (specially tempered) glassware under T.D. 94–26 consists of three tests. They are the ''macroscopic analysis'', ''thermal shock test'', and ''evaluation of temper''. The evaluation of temper test utilizes a polariscope for transparent or translucent glassware and a cutting test for opaque glassware.

This document proposes modifications to the cutting test for opaque glassware. Under the proposal, the testing procedures for the macroscopic test, thermal shock test, and polariscopic examination aspect of the evaluation of temper test will remain the same. This document also sets forth proposed guidelines for the reinstatement of a previously used test referred to as the ''center punch test'', and adds a description of the center punch apparatus that will be used for the test. In addition, this document proposes to provide for the optional use of additional tests that would be used only to verify the results obtained from the testing procedures specifically identified in this document. A more detailed description of the modifications proposed to the standards for the testing of pressed and toughened (specially tempered) glassware is set forth below.

Current Procedures

As noted above, the analysis method to be used for the testing of pressed and toughened (specially tempered) glassware consists of the macroscopic analysis, thermal shock test, and evaluation of temper. As it is not proposed to change the macroscopic analysis or thermal shock test, those tests are not described in this document. Likewise, as the polariscopic examination portion of the evaluation of temper test is not proposed to be changed, that test is also not discussed in this document.

The cutting test for opaque glassware is used for opaque glassware and translucent glassware that cannot be examined polariscopically because they do not transmit adequate polarized light. In order to perform the test under current procedures, T.D. 94–26 states that the analyst must initially ensure that a saw is equipped with a continuous rim diamond blade that is designed for wet cutting glass. The analyst must then adjust the cutting head of the saw vertically and horizontally, as necessary, to accommodate the glassware article and ensure that the water supply to both sides of the diamond-rimmed blade is adequate. The saw is then turned on and the glassware article is slowly moved into contact with the blade where it is cut as necessary. In order to provide guidance in interpreting the results obtained from this test, T.D. 94–26 states that annealed (non-tempered) glassware will readily accept the diamond-rimmed blade and will be cleanly cut in half. Tempered glass, on the other hand, will break into pieces when cut. In addition, it is noted that tempered soda lime and borosilicate glass will break almost immediately, whereas tempered fluorosilicate glass will not break until the blade has cut through at least part of the article. The extent of cutting needed to induce breakage under this test may vary from item to item, but in no event will

tempered articles be cleanly cut in half by the diamond-rimmed blade.

Proposed Changes to Cutting Test for Opaque Glassware

This document proposes changes to the cutting test for opaque glassware set forth in T.D. 94–26. Specifically, it is proposed to revise the criteria used to interpret the results obtained from the test and to add an interpretation of breakage in the test because the guidelines set forth in T.D. 94–26 did not clearly explain how such breakage should be interpreted. Under the proposal, CBP will interpret the test such that the presence of ''some'' dicing or crazing would be sufficient to determine that a glass article has been specially tempered for tariff classification purposes. Under this standard, ''some'' would be considered to be any diced, crazed (gravel that remains tenuously in contact with neighboring pieces), or graveled (presence of small cubes of approximately equal dimensions on all six sides) fragments yielded from the cut sample that is more than just a fugitive diced, crazed, or graveled fragment. Also under the proposal, the references to tempered soda lime, borosilicate, and fluorosilicate glass that are currently in the test would be removed because the composition of the glass is not relevant for testing purposes.

Proposal To Add Center Punch Test

This document also proposes to reinstate a previously used test, referred to as the center punch test, to be used for the testing of pressed and toughened (specially tempered) glassware. It is also suggested that if a sample is less than five inches in diameter or five inches wide, it would be considered too dangerous to perform the cutting test. In this case, the center punch test is preferable. The center punch apparatus to be used for this test must be a slender tool approximately 8″ to 12″ in length having one end tapered to a point. The tool must be long enough to allow its insertion into tall-form tumblers and other articles of similar shape while permitting the nonpointed end to extend above the rim. This is necessary for handling and safety purposes when performing the center punch test. The pointed end of the center punch should not be so sharp that it chips the glassware on contact without applying pressure.

In order to perform the center punch test under the proposal, a sample would initially be set on a solid, level surface. The analyst would then place the pointed end of the center punch vertically against the inside center bottom or heel. The analyst would strike the dull end of the punch with a hammer, using blows of gradually increasing severity until breakage occurs. The breakage pattern, approximate number, and relative shape and size of the fragments would then be noted. Thereafter, the breakage pattern and/or typical fragments would be photographed. In order to interpret the results of the proposed center punch test, it is only necessary for the broken sample to exhibit ''some'' dicing, crazing, or graveling in order to be considered tempered for CBP purposes. ''Some'' would be considered to be any diced, crazed, or graveled fragments yielded by the broken sample that is more than just a fugitive diced, crazed, or graveled fragment.

Proposal To Add Option To Use Additional Tests

In addition, this document proposes to provide for the optional use of additional tests. The additional tests would be used by CBP only to verify the results obtained from the testing procedures specifically identified in this document. The additional tests would facilitate the overall testing process by ensuring that the results obtained from the testing procedures specifically identified in this document are accurate.

Solicitation of Comments

Accordingly, as set forth above, it is proposed to revise the methods employed by CBP to test pressed and toughened (specially tempered) glassware by modifying the cutting test for opaque glassware, providing a description of the center punch apparatus, and reinstating the center punch test. In addition, it is proposed to provide for the optional use of additional tests that would be used only to verify the results obtained from the testing procedures specifically identified in this document. Prior to making any final changes to the current procedures for the testing of pressed and toughened (specially tempered) glassware, as set forth in T.D. 94–26, consideration will be given to written comments timely submitted in accordance with the instructions set forth in the **ADDRESSES** section of this document. This consideration may include a rigorous assessment of any suggested techniques or methods through an interlaboratory testing program. If the changes proposed in this notice are adopted, CBP will publish a complete revised standard reflecting the adopted changes.

Dated: January 3, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services, U.S. Customs and Border Protection.

[FR Doc. E8–241 Filed 1–8–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H; G–08–0039]

Notice of Public Meetings for the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Steens Mountain Cooperative Management and Protection Act of 2000, the Federal Land Policy and Management Act, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, Steens Mountain Advisory Council will meet as indicated below:

DATES: The Steens Mountain Advisory Council will meet at the Bureau of Land Management Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, on January 31 and February 1, 2008; March 13 and 14, 2008; and December 4 and 5, 2008.

A meeting in Bend, Oregon, at the Comfort Inn and Suites, 62065 SE 27th Street, will be held May 1 and 2, 2008, and a meeting September 11 and 12, 2008, will be held at the Frenchglen School, Frenchglen, Oregon. All meeting sessions will begin at 8 a.m. local time, and will end at approximately 4:30 p.m., local time.

SUPPLEMENTARY INFORMATION: The Steens Mountain Advisory Council was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399) and re-chartered in August 2003 and again in August 2005. The Steens Mountain Advisory Council's purpose is to provide representative counsel and advice to the Bureau of Land Management regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area; cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area; and preparation and implementation of a management

plan for the Steens Mountain Cooperative Management and Protection Area.

Topics to be discussed by the Steens Mountain Advisory Council at these meetings include the Steens Mountain Comprehensive Recreation Plan; North Steens Ecosystem Restoration Project implementation; Science Strategy; South Steens Water Development Project EA; easements and acquisitions; In-holder Access EA; and categories of interest such as wildlife, special designated areas, partnerships/programs, cultural resources, education/interpretation, volunteer-based information, adaptive management and socioeconomics; and other matters that may reasonably come before the Steens Mountain Advisory Council.

All meetings are open to the public in their entirety. Information to be distributed to the Steens Mountain Advisory Council is requested prior to the start of each Steens Mountain Advisory Council meeting. Public comment is generally scheduled for 11 a.m. to 11:30 a.m., local time, both days of each meeting session. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

Under the Federal Advisory Committee Act management regulations (41 CFR 102–3.15(b)), in exceptional circumstances an agency may give less than 15 days notice of committee meeting notices published in the **Federal Register**. In this case, this notice is being published less than 15 days prior to the meeting due to the urgent need to meet legal requirements for completion of the Steens Mountain Travel Management Plan/Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Kevin Thissell, Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, (541) 573–4400 or *Kevin_Thissell@blm.gov*.

Dated: January 3, 2008.

Dana R. Shuford,

District Manager.

[FR Doc. E8–247 Filed 1–8–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Anacostia Park Wetlands Management Plan With Goose Management Strategies

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement for the Anacostia Park Wetlands Management Plan With Goose Management Strategies.

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), the National Park Service (NPS) will prepare an Environmental Impact Statement for the Anacostia Park Wetlands Management Plan with Goose Management Strategies (EIS).

The current Proposed Action is a modification of the original proposal to prepare an Environmental Assessment. Based on comments received during internal scoping (February 2007), agency scoping (March 2007) and public scoping (June–August 2007) for the Anacostia Park Wetlands Restoration Plan with Goose Management Strategies Plan/Environmental Assessment (EA), the NPS recognizes that wetland management actions could result in some significant impacts to the park's resources.

This notice serves as an announcement of an additional 30-day public comment period. Comments submitted to the park or through Planning, Environment and Public Comment (PEPC) during the public scoping period (June 25–August 10, 2007) and at the public meetings (July 17 and 18, 2007) for the EA will be considered as part of the planning process for the current proposed action and do not need to be resubmitted. The intent of this notice is to obtain suggestions and additional information on the scope of issues to be addressed in the EIS.

DATES: NPS is soliciting further public input into this planning process until February 8, 2008.

ADDRESSES: Comments may be submitted through the Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/anac* or they may be submitted by mail to: Superintendent, National Capital Parks East, RE: Wetlands Restoration Plan/EIS, 1900 Anacostia Dr., SE., Washington, DC 20020.

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.

The NPS considers public participation and input as an integral part in the planning and environmental impact analysis process guiding preparation of the EIS. As mentioned above, comments submitted during the public scoping process for the EA do not need to be resubmitted, but additional input is welcome.

FOR FURTHER INFORMATION CONTACT: Stephen Syphax, Supervisory Resources Management Specialist, National Capital Parks-East, RE: Wetlands Restoration Plan/EIS, at 1900 Anacostia Drive, SE., Washington, DC 20020, by e-mail at *Stephen_Syphax@nps.gov*, or by telephone at (202) 690–5160.

SUPPLEMENTARY INFORMATION: The purpose of this action is to develop and implement a wetlands management plan that facilitates the protection of natural wetland functions within Anacostia Park. Action is needed at this time to address the protection of natural wetland functions within wetlands in Anacostia Park. A plan is considered necessary to identify wetland restoration strategies that address factors affecting current and future restoration activities.

The Anacostia River was historically flanked with nearly 2,500 acres of tidal marsh. However, in the early 20th century the Army Corps of Engineers was charged with a major ''reclamation'' effort designed to improve navigation by channeling and containing the river within a stone seawall. Tidal flats and wetlands were also drained and filled to help rid the area of mosquito-borne diseases.

Public and government interest in restoring wetlands in the Anacostia River Watershed grew in the 1980s and the National Park Service began working with others to restore nearly 100 acres of tidal marsh.

Over the past decade an increasing number of Canada geese have been observed in Anacostia Park. Normally a migratory species, these ''resident'' geese are the descendents of individuals that were captured and prevented from migrating in order to attract more of their kind. As a result, their offspring never migrated either. The abundance of

food and lack of predators in urban areas have fostered a rapidly growing population of these non-migratory Canada geese.

In recent years, invasive exotic plant species have also increased, and restored wetlands have proven to be especially vulnerable to these. Construction methods, soil elevations, and hydrologic regimes have also proven to be critical to the success or failure of these efforts.

Through scoping efforts, several draft objectives were outlined for the EIS:

General—Ensure actions are consistent with the laws, policies and regulations that guide the National Park Service.

Habitat and Vegetation—Restore, protect, and maintain wetlands for native fish and wildlife populations; maintain native wetlands vegetation and manage the encroachment of invasive and exotic plant species; and restore, protect, and maintain wetland functions.

Wildlife—Manage the resident Canada goose population to allow for the restoration and protection of park resources.

Visitor Experience—Enhance visitor experience by restoring, maintaining, protecting, and interpreting wetlands; and enhance public understanding of the value of wetland restoration and issues associated with the management of resident Canada geese.

Park Operations—Consider and plan for impacts of wetland restoration efforts and resident Canada goose management response activities on current park operations, including budget, workload, and visitor experience.

Cooperation and Coordination—Cooperate and coordinate with the District of Columbia, the Army Corps of Engineers, and other governmental agencies as well as other stakeholders in implementing a wetlands management plan and goose management strategy.

Preliminary scoping also identified several factors relevant to the success of wetland restoration efforts in Anacostia Park, including: resident Canada goose herbivory, erosion and sedimentation, hydrologic regimes, wetland vegetation planting methods, urbanization effects and invasive and exotic plant species.

Some preliminary solutions have been proposed that will be evaluated as part of the planning process. To address resident Canada goose management, the following suggestions have been proposed for evaluation: Habitat alteration, visual deterrents or repellants, egg addling to control reproduction, and lethal controls such as capture and euthanasia or sharpshooting. To respond to erosion and sedimentation, proposed actions include: the use of bio logs to stabilize wetlands, vegetation evaluation, and soft and hard armoring. Suggestions for tackling issues surrounding hydrologic regimes and wetland vegetation are: Address surface elevation of wetland areas by planting vegetation appropriate to elevation, and provide conditions allowing wetlands to establish naturally without revegetation efforts. To address the effects of urbanization on the wetlands, suggestions include: Planting high uptake plants, using volunteers to remove trash, and mitigating outfall impacts. Lastly, to address the impacts of invasive and exotic plants potential actions include: Mapping and surveying invasive and exotic plant species in wetland areas, mechanical removal, chemical control (EPA approved herbicides), and biocontrols such as insects. The scope of the EIS includes the restored freshwater emergent tidal marshes in Anacostia Park. Potential areas for future restoration efforts will be identified in the EIS, but not analyzed in detail.

Dated: December 21, 2007.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. E8–245 Filed 1–8–08; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30–Day Notice of Information Collection Under Review: COPS Non-Hiring Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 234, Pages 68898–68899, on December 6, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment February 8, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) Type of Information Collection: Proposed collection; comments requested.

(2) Title of the Form/Collection: COPS Non-Hiring Progress Report.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Law enforcement and partner public safety agencies, institutions of higher learning and non-profit organizations that are recipients of COPS Non-Hiring Grants from Fiscal Year 2007 and forward.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

It is estimated that approximately 2,975 annual, quarterly, and final report respondents can complete the report in an average of one hour.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,200 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 3, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–139 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0097]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection, With Change; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Budget Detail Worksheets.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. This extension of a previously approved information collection was previously published in the **Federal Register** Volume 72, Number 205, page 60390–60391, on October 24, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the extension of a previously approved 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 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection.

(2) *Title of the Form/Collection:* COPS Budget Detail Worksheets.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Budget Detail Worksheets. The COPS Budget Detail Worksheets are the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Public Law 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. The worksheets standardized the budget forms across all COPS Office programs and reduced the burden on applicants due the applicant's ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 6,200 respondents annually will complete the form within 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,400 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 3, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–140 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection, With Change; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Application Attachment to SF–424.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. This extension of a currently approved information collection was previously published in the **Federal Register** Volume 72, Number 205, pages 60389–60390, October 24, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment February 8, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs,

Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection, with change.

(2) *Title of the Form/Collection:* COPS Application Attachment to SF–424.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Attachment to SF–424. The COPS Application Attachment to SF–424 is the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Public Law 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. This form streamlined application forms across all COPS Office programs and reduced the burden on applicants due the applicant's ability to use the same form for multiple programs, thus reducing the need for applicants to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 6,200 respondents annually will complete the form within 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 62,000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 3, 2008.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–141 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0058]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Investigator Integrity Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 10, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Renee Reid, Chief, Personnel Security Branch, 131 M Street, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Investigator Integrity Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.7. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. ATF utilizes the services of contract investigators to conduct security/suitability investigations on prospective or current employees, as well as those contractors and consultants doing business with ATF. Persons interviewed by contract investigators will be randomly selected to voluntarily complete a questionnaire regarding the investigator's degree of professionalism.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 5-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 3, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–137 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0035]

Criminal Justice Information Services Division; National Instant Criminal Background Check System Section; Agency Information Collection Activities: Existing Collection, Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Approval of an existing collection; The National Instant Criminal Background Check System (NICS) State Point of Contact (POC) Final Determination Electronic Submission.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 72, Number 208, Pages 61183–61184, on October 29, 2007, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2008. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), section 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Forms:* The National Instant Criminal Background Check System (NICS) State Point of Contact (POC) Final Determination Electronic Submission.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0035.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Full State Points of Contact (POC), Partial POCs, Alternate Permit State POCs.

Brief Abstract: This collection is requested of Full State Points of Contact (POCs), Partial POCs, and Alternate Permit State POCs. Per 28 Code of Federal Regulations, Section 25.6(h), POC States are required to transmit electronic determination messages to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section of the status of a firearm background check in those instances in which a transaction is ''open'' (transactions unresolved before the end of the operational day on which the transaction was initiated); ''denied'' transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The State POC must communicate this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a ''proceed.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 21 State POCs and ten Alternate Permit State POCs who conduct an average of 4,312,811 transactions per year. It is estimated that 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,121,331 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It will require one minute (60 seconds) for each POC State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 18,689 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States, then 603 hours would be the estimated time for each of the 31 states to respond. Recordkeeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The average yearly hour burden for submitting final determinations combined is: (4,312,811 total checks × 26 percent)/60 seconds = 18,689 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 3, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–138 Filed 1–8–08; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection for the Work Opportunity Tax Credit Program; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the consolidated Work Opportunity Tax Credit (WOTC) Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 10, 2008.

ADDRESSES: Submit written comments to the Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Christine Ollis; Telephone number: 202–693–3937 (this is not a toll-free number). Fax: 202–693–3587. E-mail: *ollis.christine@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Data on the consolidated WOTC Program will be collected by the State Workforce Agencies (SWAs) and provided to the Division of Adult Services, Office of Workforce Investment, Washington, DC, through the appropriate Department of Labor (DOL) regional offices via a quarterly management report. The data obtained from the administrative or processing forms will be used for WOTC national office program performance management and outcome reporting.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

This is a request for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)) to extend, with revisions, the collection of information and use of program materials for the consolidated WOTC Program. On May 25, 2007 the President signed into law the *Small Business and Work Opportunity Tax Act of 2007* (Pub. L. 110–28). Section 8211 of this Act extended and modified the WOTC Program for a continuing 44-month period through August 31, 2011. The new provisions & amendments to certain target groups apply to new hires that begin to work for an employer after May 25. Another recent legislation, the *Tax Relief and Health Care Act of 2006 (Pub. L. 109–432)* signed into law on December 20, 2006 extended, retroactively, the WOTC for two additional years through December 31, 2007 and consolidated the program by merging the Welfare-to-Work Tax Credit into the WOTC. Section 105 of this Act also made various amendments and introduced new provisions that streamline the program and make it easier for the business sector to participate. The statutory changes and new provisions required that the following program report, processing and administrative forms, and materials be revised and updated to reflect the new changes and provisions: (1) ETA Form 9058—Report 1; (2) ETA Forms 9057, 9059, 9061–9063, and 9065; (3) ETA Handbook 408, Fourth Edition, November 2007; and (4) the Technical Assistance and Compliance Review Guide.

Further, the Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) requires that, when feasible, Federal agencies design and implement the use of automated systems that facilitate the electronic signature and filing of forms (by participants) to conduct official business with the public by 2003. The Division of Adult Services, Office of Workforce Investment, complied with this requirement by successfully implementing an electronic reporting system for the tax credit program and the WOTC quarterly report. The automated reporting system is known as ETA's Enterprise Business Support System (EBSS) Tax Credit Reporting System (TCRS). The EBSS/TCRS is a Web-based system that allows states to meet the reporting responsibilities in a more efficient manner while reducing the reporting burden on the state, regional, and national levels. Through this system, states can manually enter or electronically upload the required quarterly data report, ETA Form 9058—Report 1.

Type of Review: Revision of Currently Approved Collection.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit Program.

OMB Number: 1205–0371.

Estimated Time per Respondent:

Requirement	Total respondents	Frequency	Annual response	Average response time in hours	Annual burden hours
.....	.....	.....	.....	.....	.....
Form 9058—Report 1	52	Quarterly	208	1:00	208
Employer/Job-seeker Complete Form 9061.	990,000	On occasion	990,000	.33	326,700

Requirement	Total respondents	Frequency	Annual response	Average response time in hours	Annual burden hours
Form 9061 processed by SWAs	52	On occasion	990,000	.33	326,700
Form 9062	52	On occasion	40	.33	13
Form 9063	52	On occasion	440,000	.33	145,200
Form 9065	52	Quarterly	208	1:00	208
Record Keeping	52	Annually	52	931	48,412
Form 9057	52	Quarterly	208	1.00	208
Form 9059	52	Quarterly	208	1.00	208
Planning Guidance	52	One Time	52	8:00	416
Modification Planning Guidance	52	One Time	52	1:00	52
Total	990,520		2,421,028		848,325

Total Burden Hours: 848,325.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 31, 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E8–119 Filed 1–8–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–002)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, January 28, 2008, 8:30 a.m. to 5:30 p.m. and Tuesday, January 29, 2008, 8:30 a.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Astrophysics Division Overview and Program Status

—Keck Time Usage Discussion

—Beyond Einstein Program Assessment Committee and Exoplanet Task Force Reports Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and 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 no less than 5 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: December 21, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–133 Filed 1–8–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–001)]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, January 28, 2008, 9 a.m. to 5 p.m. and Tuesday, January 29, 2008, 9 a.m. to 2 p.m. Pacific Standard Time.

ADDRESSES: Jet Propulsion Laboratory, Room 180–703C, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection and the Ethics of Planetary Exploration

—Mars Sample Return Mission Plans

—Planetary Protection for Mars Exploration and Lunar Precursors

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be

requested to sign a register and to comply with NASA/Jet Propulsion Laboratory security requirements, including the presentation of a valid Government issued picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 7 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. Additional information may be requested. A Passport and Visa must be presented at the time of entrance to the Jet Propulsion Laboratory. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: December 21, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–134 Filed 1–8–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–003)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license worldwide to practice the inventions described and claimed in U.S. Patent No. 5,499,294, entitled ''Digital Camera With Apparatus For Authentication Of Images Produced From An Image File'' to Kappa Opto-Electronics, Inc., a wholly owned subsidiary of Kappa Opto-Electronics GmbH, having its principal place of business in Monrovia, CA. The fields of use may be limited to standard or customized CCD systems. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code 180–200, NASA Management Office, 4800 Oak Grove Drive, Pasadena, CA 91109, (818) 354–7770; (818) 393–3160 [Facsimile].

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, Mail Code 180–200, 4800 Oak Grove Drive, Pasadena, CA 91109, (818) 354–7770; (818) 393–3160 [Facsimile]. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Dated: January 2, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–132 Filed 1–8–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–004)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Partially Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license to practice the invention described and claimed in NASA Case Number LAR–16324–1–NP entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 6,714,132; LAR–16324–2 entitled ''Self-Activating System and Method for Alerting When an Object or a Person is Left Unattended,'' U.S. Patent Number 7,106,203 to SYR Technologies, Inc. having its principal place of business in Los Angeles, California. The patent rights have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, (757) 864–3521; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/*.

Dated: January 2, 2008.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E8–131 Filed 1–8–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES:

January 28, 2008, 11 a.m.–6 p.m.

January 29, 2008, 8:30 a.m.–5 p.m.

January 30, 2008, 8:30 a.m.–4:45 p.m.

LOCATION: New Orleans Marriott/ Convention Center, 859 Convention Center Blvd., LA.

STATUS:

January 28, 2008, 11 a.m.–5:30 p.m.—Open.

January 28, 2008, 5:30 p.m.–6 p.m.—Closed Executive Session.

January 29, 2008, 8:30 a.m.–5 p.m.—Open.

January 30, 2008, 8:30 a.m.–4:45 p.m.—Open.

AGENDA: News Conference to Release *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report;* Public Comment Sessions; Emergency Preparedness Panel Discussion; Health Care Panel Discussion; Reports from the Chairperson, Council Members, and the Executive Director; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies, programs, practices, and procedures that (A) guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and (B) empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD immediately.

Dated: January 3, 2008.

Michael C. Collins,

Executive Director.

[FR Doc. 08–57 Filed 1–4–08; 4:24 pm]

BILLING CODE 6820–MA–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of ABC Dispensing Technologies, Inc. (n/k/a Ka Wang Holding, Inc.), Accent Color Sciences, Inc., Access Tradeone.com, Inc., ActFit.com, Inc. (n/k/a Telum International Corp.), Addison-Davis Diagnostics, Inc., Aden Enterprises, Inc., AdPads, Inc., Advanced Products Group, Inc. (n/k/a Cloudtech Sensors, Inc.), Advanced Recycling Sciences, Inc., Advanced Systems International, Inc., Aero Group, Inc., and Alford Refrigerated Warehouses, Inc.; Order of Suspension of Trading

January 4, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ABC Dispensing Technologies, Inc. (n/k/a Ka Wang Holding, Inc.) because it has not filed any periodic reports since the period ended July 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accent Color Sciences, Inc. because it has not filed any periodic reports since the period ended June 29, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Access Tradeone.com, Inc. because it has not filed any periodic reports since November 2, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ActFit.com, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Addison-Davis Diagnostics, Inc. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aden Enterprises, Inc. because it has not filed any periodic reports since the period ended January 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AdPads, Inc. because it has not filed any periodic reports since September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Products Group, Inc. (n/k/a Cloudtech Sensors, Inc.) because it has not filed any periodic reports since December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Recycling Sciences, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Systems International, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aero Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alford Refrigerated Warehouses, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest andd the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EST on January 4, 2008, through 11:59 p.m. EST on January 17, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 08–38 Filed 1–4–08; 1:38 pm]

BILLING CODE 8011–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57083; File No. SR–CBOE–2007–151]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Linkage Fees

January 2, 2008.

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 December 20, 2007, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Intermarket Linkage (''Linkage'') fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary 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, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

Under the Exchange's current Fees Schedule, Principal (''P'') and Principal Acting as Agent (''P/A'') orders[3] are charged a transaction fee of $.26 per contract.[4] Satisfaction orders are not assessed Exchange fees. Linkage fees are operating under a pilot program scheduled to expire on July 31, 2008.

The Exchange proposes to increase its Linkage transaction fee from $.26 per contract to $.30 per contract. The proposed fee increase would help the Exchange partially offset its costs of crediting Linkage fees and related costs to Designated Primary Market-Makers (''DPMs'') pursuant to the Exchange's DPM Linkage Fees Credit Program.[5] The Exchange believes the proposed fee is reasonable in that it is significantly lower than Linkage fees currently charged by certain exchanges.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–151 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–2007–151. 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 Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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–2007–151 and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (''Plan'') and Exchange Rule 6.80(12), which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) ''P/A Order,'' which is an order for the principal account of a specialist (or equivalent entity an another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) ''P Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] Linkage orders in MNX, NDX, and RUT options are also charged a $.10 per contract surcharge fee. *See* CBOE Fees Schedule, Footnote 14.

[5] *See* CBOE Fees Schedule, Section 21.

[6] The Exchange believes NYSEArca, Inc., charges $.50 per contract on electronically executed Linkage orders and the Boston Options Exchange charges $.45 per contract or $.50 per contract for Linkage orders in classes included in its make or take pricing structure.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–151 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57095; File No. SR–CBOE–2007–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Regarding Nullification and Modification of Transactions Executed on CBOE Stock Exchange

January 3, 2008.

On June 12, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make various revisions to CBOE Stock Exchange (''CBSX'') Rule 52.4, which governs the nullification and modification of transactions executed on CBSX. On November 8, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 27, 2007.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change as amended.

The Exchange proposes to revise CBSX Rule 52.4 to: (1) Require a request for review of a transaction to be made by only one of the following methods: telephone; facsimile; or e-mail (in order to simplify the process for those making requests); (2) require such a request to be made within thirty minutes of the trade in question, or within forty-five minutes of the trade if that trade occurred within the first thirty minutes of trading in the product involved in the trade (in order to give more time for requests which, based on the Exchange's experience so far, is necessary); (3) give the individual(s) who reviews transactions under the Rule the label of ''designated official,'' so that they need not be officers of the Exchange; and (4) eliminate the requirement that the notification to the parties to the trade of the official's determination be given in writing and by the official. The aforementioned changes numbered (1) and (4) are based on, and conform CBSX Rule 52.4 to, NYSE Arca Equities Rules 7.10(b) and 7.10(c)(1), respectively.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission believes that the Exchange's proposal to revise its CBSX rule governing clearly erroneous transactions is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2007–65), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–155 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57094; File No. SR–CBOE–2007–154]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Marketing Fee Program

January 3, 2008.

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 December 28, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Marketing Fee Program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and ≤*http://www.cboe.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its marketing fee program as follows. First, CBOE proposes to decrease the fee from $.30 to $.25 in the following Penny Pilot classes: equity options, OIH, SMH, XLE, and XLF. CBOE would continue to collect the marketing fee at the rate of $.10 per contract in DIA and SPY, and not collect the marketing fee in QQQQ and IWM. CBOE believes that this change would allow CBOE Market-

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56818 (November 19, 2007), 72 FR 66205.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 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. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Makers, RMMs, e-DPMs, or DPMs (collectively ''market-makers'') to compete better for order flow in these option classes.

Second, CBOE proposes to amend the fee such that the marketing fee would not apply to transactions in Penny Pilot classes resulting from orders executed through the Hybrid Agency Liaison under CBOE Rule 6.14 in which market-makers ''step up'' through the HAL system and trade with orders that are marketable against the NBBO when CBOE is not the NBBO. CBOE believes that this change would encourage market-makers to execute orders at CBOE at the NBBO.

CBOE proposes to implement these changes to the marketing fee program beginning on January 2, 2008. CBOE is not amending its marketing fee program in any other respects.

2.Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] 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.

C.Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CBOE–2007–154 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–2007–154. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–154 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–157 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57093; File No. SR–NYSE–2007–127]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Certain Regulatory Fees

January 3, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as one concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to eliminate, effective January 1, 2008, certain regulatory fees that NYSE Regulation, Inc. (''NYSE Regulation'') currently remits to the Financial Industry Regulatory Authority, Inc. (''FINRA'') and which FINRA has determined should be eliminated effective January 1, 2008. The text of the proposed rule change is available on NYSE's Web site at *http://www.nyse.com,* at NYSE's principal office, and at the Commission's Public Reference Room.

[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)(3).

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 NYSE 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 NYSE 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 Exchange proposes to eliminate, effective January 1, 2008, certain regulatory fees that are charged to member organizations, including registered persons fees, branch office registration fees, credit extension fees, and certain other regulatory and testing fees.

On July 30, 2007, NYSE Regulation and the National Association of Securities Dealers, Inc. (''NASD'') consolidated their member regulation operations into a combined organization, FINRA. In connection with that transaction, NYSE Regulation agreed to remit to FINRA certain registration and regulatory fees that NYSE charges its member organizations. Because the regulatory activities associated with those fees are now performed by FINRA, those fees compensate FINRA for the regulatory services it assumed as a result of the regulatory consolidation.

The NYSE registration and regulatory fees currently remitted to FINRA include:

- Branch Office Fees, which are charged, per branch, $350.00 for the first 1,000 branches, $150.00 for the next 2,000 branches, and $125.00 for over 3,000 branches; [5]
- Registered Persons Fees, which are $65.00 for a new applicant, $43 for a transfer applicant, and $52.00 for annual maintenance, per person; [6]
- Regulation T Credit Extensions, which are $4.00 per extension; [7]
- Statutory Disqualification Filing Fee, which is $1,500; [8]
- Statutory Disqualification Review Fee, which is $1,000; [9]
- FOCUS Feedback, which is $250.00 each or $900 for four quarters; [10]
- Regulatory Element Fee, which is $75.00; [11] and
- Series 7 Qualification Exam, which is $100.[12]

The foregoing fees are charged under the authority of NYSE rules that have been designated as ''Common Rules'' under the 17d–2 Allocation Plan that NYSE entered into with FINRA.[13] FINRA has informed NYSE Regulation that it has reviewed the above-listed registration and regulatory fees and has determined to cease charging those fees effective January 1, 2008. FINRA will make a parallel filing with the Commission to reflect this determination. Accordingly, as contemplated by the 17d–2 Agreement, the NYSE is filing to amend its Price List to eliminate the above-listed fees, effective January 1, 2008.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [14] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and has, therefore, become effective pursuant to section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(3) thereunder.[16] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSE–2007–127 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–NYSE–2007–127. 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] *See* NYSE Rule 342.11; *see also* FINRA By-Laws, Section 4(a) of Schedule A.

[6] *See* NYSE Rule 345.14; *see also* FINRA By-Laws, Section 4(b) of Schedule A.

[7] *See* NYSE Rule 434; *see also* FINRA By-Laws, Section 8 of Schedule A.

[8] *See* NYSE Rule 346(f); *see also* FINRA By-Laws, Section 12 of Schedule A.

[9] *See* NYSE Rule 346(f); *see also* FINRA By-Laws, Section 12 of Schedule A.

[10] *See* NYSE Rule 416.10.

[11] *See* NYSE Rule 345A; *see also* FINRA By-Laws, Section 4(f) of Schedule A.

[12] *See* NYSE Rule 345; *see also* FINRA By-Laws, Section 4(c) of Schedule A.

[13] Pursuant to Rule 17d–2 under Act, NYSE, NYSE Regulation, Inc., and NASD entered into an agreement to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007, by allocating to FINRA certain regulatory responsibilities for selected NYSE rules (the ''17d–2 Agreement''). The Agreement includes a list of those rules (''Common Rules'') for which FINRA has assumed regulatory responsibilities. *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii).

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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2007–127 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–156 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57087; File No. SR–NYSEArca–2008–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Closing Time for Options on Exchange-Traded Funds

January 2, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by NYSE Arca. The Exchange filed the proposal as ''non-controversial'' pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend NYSE Arca Rule 7.1 in order to change the time at which certain options on exchange-traded funds (''ETFs'') cease trading on the Exchange from 1:15 p.m. Pacific Time (''PT'') to the time trading ceases in the core trading session of the primary listing exchange for the underlying security. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nysearca.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 7.1 (''Rule''), Trading Sessions, to change the time at which certain options on ETFs cease trading on the Exchange. The rule currently specifies the trading hours for options on ETFs as commencing at 6:30 a.m. PT and ending at 1:15 p.m. PT. This extended trading time mirrored the operative closing time of the underlying ETF, which for most underlying ETFs was 1:15 p.m. PT—as set by the primary listing exchange.

Recently, the Exchange submitted a proposed rule change that was effective upon filing that governs the trading hours of ETFs listed on NYSE Arca Equities.[5] As a result of that proposed rule change, the closing time for ETFs listed on NYSE Arca Equities changed from 1:15 p.m. PT to 1 p.m. PT. In order to synchronize the closing time of options on ETFs with the closing of the underlying ETF on the primary listing exchange, NYSE Arca hereby proposes to cease trading of the overlying options at the same time as the primary listing exchange closes its core trading session in the underlying ETF.[6] In the case of options on ETFs listed on NYSE Arca Equities, starting January 2, 2008, this time will be 1 p.m. PT.

The Exchange intends this system change to be effective on filing and operative on January 2, 2008. By amending this rule, the Exchange will simply synchronize the closing time for options on ETFs with the time at which the core trading session of the underlying ETF closes on the primary listing exchange.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect

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[17] 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. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56888 (December 3, 2007), 72 FR 70366 (December 11, 2007) (SR–NYSEArca–2007–124).

[6] As amended, this rule will mirror that of the Chicago Board Options Exchange (''CBOE''). CBOE Rule 6.1 Interpretations and Policies .01 states, in part, that ''hours during which transactions in options on individual stocks may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the stocks underlying CBOE options.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

NYSE Arca has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative on January 2, 2008. The proposal would synchronize the closing time for options on ETFs with the time at which the underlying ETF closes in the core trading session of the primary listing exchange. The Commission notes that the present proposal is similar to CBOE Rule 6.1. Therefore, the Commission designates the proposed rule change as operative on January 2, 2008.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–01. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 Number SR–NYSEArca–2008–01 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–135 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change pursuant to Rule 19b–4(f)(6)(iii). The Commission hereby grants this request.

[11] For the purposes only of waiving the operative date of 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] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57086; File No. SR–Phlx–2007–90]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the $1 Strike Pilot Program

January 2, 2008.

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 December 12, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 28, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to expand the $1 Strike Pilot Program (''$1 Pilot'') and to request permanent approval of the $1 Pilot.[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange states that Amendment No. 1 to the proposed rule change supersedes and replaces the original filing in its entirety.

[4] The Commission approved the $1 Pilot on June 11, 2003. *See* Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55). The $1 Pilot has subsequently been extended through June 5, 2008. *See* Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38) (extending the $1 Pilot until June 5, 2005); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35) (extending the $1 Pilot until June 5, 2006); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36) (extending the $1 Pilot until June 5, 2007); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29) (extending the $1 Pilot until June 5, 2008). The other options exchanges have similar $1 strike price listing programs that were likewise extended through June 5, 2008.

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 purpose of the proposed rule change is to expand the number of options classes eligible for the $1 Pilot and to request permanent approval of the $1 Pilot and thereby provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks and allow equity options positions that are better tailored to meet investment objectives.

The $1 Pilot, under the terms set forth in Commentary .05 to Phlx Rule 1012, currently allows the Exchange to establish $1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where: (1) The underlying stock closes below $20 on the primary market on the trading day before selection by the Exchange; (2) the $1 strike price is from $3 to $20; (3) the $1 strike price is no more than $5 above or below the closing price of the underlying stock on the preceding day; and (4) the $1 strike price is not within $0.50 of an existing $2.50 strike price in the same series. The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the $1 Pilot. In addition, pursuant to the $1 Pilot, the Exchange may list $1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $1 strike price program under their respective rules.

The Exchange proposes to expand the $1 Pilot to allow it to select a total of 10, instead of the current 5, individual stocks on which option series may be listed at $1 strike price intervals. Additionally, the Exchange proposes to expand the price range on which it may list $1 strikes to $3–$50, instead of the current $3–$20. The proposed expanded and permanent $1 Pilot would be known as the ''$1 Strike Program.'' The Exchange notes that the existing restrictions on listing $1 strikes would continue to apply; *i.e.*, no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day or that would result in strike prices being $0.50 apart.

As stated in the Commission order approving Phlx's $1 Pilot and in the subsequent extensions of the $1 Pilot,[5] the Exchange believes that $1 strike price intervals provide greater trading flexibility to investors so that they may better achieve their investment objectives. The Exchange states that its member firms representing customers have requested that Phlx seek to expand the $1 Pilot both in terms of the number of classes that can be selected by the Exchange and the range in which $1 strikes may be listed.

Phlx's last $1 Pilot report (the ''Report'') reviewed the Exchange's positive experience with the $1 Pilot.[6] The Exchange states that the Report showed the strength and efficacy of the $1 Pilot on the Exchange, as reflected by the increase in the percentage of $1 strikes in comparison to total options volume traded on Phlx at $1 strike price intervals and other options volume and the continuing robust open interest of options traded on Phlx at $1 strike price intervals. With regard to the impact on systems capacities, Phlx's analysis of the $1 Pilot showed that the impact on Phlx's, OPRA's, and market data vendors' respective automated systems has been negligible. The Exchange states that, as indicated in the Report, the $1 Pilot has not created, and in the future should not create, capacity problems for the systems of OPRA. Phlx represents that it has sufficient capacity to handle an expansion of the $1 Pilot, as proposed.

Finally, because the $1 Pilot has been very successful in allowing investors to establish equity options positions that are better tailored to meeting their investment objectives, Phlx requests that the $1 Pilot, as expanded, be approved on a permanent basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5), specifically,[8] in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest. The proposal should achieve this by allowing continued listing of options at $1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

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

The Exchange states that no written comments on the proposed rule change were either solicited or received.

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 Exchange 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[5] *See id.*

[6] *See* Securities Exchange Act Release No. 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29) (enclosing the Report as Exhibit 3 to the filing).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Number SR–Phlx–2007–90 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–90. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 Number SR–Phlx–2007–90 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–136 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57090; File No. SR–Phlx–2007–94]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Examinations Fee

January 3, 2008.

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 December 28, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to expand its current Examinations Fee in order to assess this fee on: (1) Member organizations and participant organizations,[5] for whom the Exchange is the Designated Examining Authority (''DEA''), that do not employ any off-floor traders; and (2) ''inactive organizations.'' While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated that the proposed changes become operative beginning January 1, 2008. The text of the proposed rule change is available at the Exchange, on its Web site at *http://phlx.com/exchange/phlx_rule_fil.html*, and at Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For purposes of this proposed rule change, the term ''participant organization'' means Foreign Currency Options Participant Organization, as that term is defined in Section 1–1(*l*) of Phlx's By-Laws. *See* telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, on December 31, 2007.

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

Currently, the Exchange implements a tiered Examinations Fee based on the number of off-floor traders in the same member/participant organization for whom the Exchange is the DEA.[6] Specifically, a member/participant organization is assessed $2,100 per month for one to ten off-floor traders; $2,600 per month for 11 to 50 off-floor traders; $5,000 per month for 51 to 200 off-floor traders; and $12,500 per month for over 200 off-floor traders. However, the following member organizations are currently exempt from the assessment of the Examinations Fee: (1) Inactive organizations;[7] and (2) organizations operating through one or more Phlx markets that demonstrated that 25% or more of its revenue as reflected on the most recently submitted FOCUS report or transactions as reflected on its purchase and sales blotter are derived from securities transactions on the Phlx.

The Exchange proposes to assess the Examinations Fee on those member/participant organizations who do not have any off-floor traders because the Exchange must examine those member/participant organizations for whom the Exchange is the DEA.[8] Member/

[6] In connection with charges assessed in connection with the trading of equity securities on XLE (the Exchange's equity trading system), Sponsored Participants are not included in the calculation of the number of off-floor traders in a Sponsoring Member Organization. *See* Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–Phlx–2006–70).

[7] An inactive organization is defined as one that has no securities transaction revenue, as determined by Financial and Operational Combined Uniform Single Report (''FOCUS reports'') or other financial filings, as long as the member/participant organization continues to have no such revenue each month.

[8] Member/participant organizations that have operated without an off-floor trader generally rely

Continued

participant organizations with no off-floor traders in the same member/participant organization would be assessed a monthly fee of $2,100, which is the same fee that is currently assessed on member/participant organizations with one to ten off-floor traders.

Additionally, the Exchange proposes to assess the Examinations Fee on inactive organizations, thereby eliminating the current inactive member/participant organization exemption.[9] As a result, inactive member/participant organizations for whom the Exchange is the DEA will be assessed the Examinations Fee based on the number of off-floor traders in that inactive member/participant organization.[10]

The Exchange intends to implement the Examinations Fee as set forth in this proposal beginning January 1, 2008.

The Exchange states that the purpose of revising the Examinations Fee is to more efficiently and effectively assess member/participant organizations for costs in connection with conducting examinations of member/participant organizations that do not have any off-floor traders for whom the Exchange is the DEA and for those that choose to elect an ''inactive status.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act[11] in general, and furthers the objectives of section 6(b)(4) of the Act[12] 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. According to the Exchange, assessing member/participant organizations an Examinations Fee as set forth in this proposal should more efficiently and effectively charge those member/participant organizations for costs associated with conducting examinations of these organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–94. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 Number SR–Phlx–2007–94 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–150 Filed 1–8–08; 8:45 am]

BILLING CODE 8011–01–P

on persons registered with affiliated broker-dealers or operate utilizing a ''black box'' trading technology.

[9] The Exchange represents that it will continue to conduct examinations of member/participant organizations that have chosen to elect an ''inactive status.'' *See* telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, on January 2, 2008.

[10] Member organizations operating through one or more Phlx markets that demonstrated that 25% or more of its revenue as reflected on the most recently submitted FOCUS report or transactions as reflected on its purchase and sales blotter are derived from securities transactions on Phlx will continue to be exempt from the assessment of the Examinations Fee.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6055]

Privacy Act of 1974; System of Records

Summary: Passport Services has prepared an update of its system of records notice (SORN) as required by the Privacy Act 5 U.S.C. 552a and Appendix I to OMB Circular A–130 (''Federal Agency Responsibilities for Maintaining Records About Individuals''). Publication in the **Federal Register** of the updated SORN will establish a number of new ''routine uses'' for sharing passport records outside the Department of State. The purpose in granting access to other entities varies, but principally encompasses the following functions:

• To support national defense, border security, and foreign policy activities;

• To ensure the proper functioning and integrity of law enforcement, counterterrorism, and fraud-prevention activities by supporting law enforcement personnel in the conduct of their duties;

• To support the investigatory process; and

• To assist with verification of passport validity to support employment eligibility and identity corroboration for public and private employment.

New routine users listed in the SORN include the Department of Homeland Security, the National Counter-Terrorism Center, the Department of Justice (including components such as the FBI), foreign governments, and entities such as Interpol, for counter-terrorism and other purposes such as border security and fraud prevention.

New routine uses are not considered effective until after a 40-day period enabling review and comment by the public, OMB and Congress.

SYSTEM NAME:

Passport Records (STATE–26).

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

Department of State, Passport Services, Annex 17, 1111 19th Street, NW., Washington, DC 20522–1705.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained in the Passport Records system about individuals who:

(a) Have applied for the issuance, amendment, extension, or renewal of U.S. passport books and passport cards;

(b) Were issued U.S. passport books or cards, or had passports amended, extended, renewed, limited, revoked, or denied;

(c) Have applied to have births overseas reported as births of U.S. citizens overseas;

(d) Were issued a Consular Report of Birth Abroad of U.S. citizens or for whom Certification(s) of Birth have been issued;

(e) Applied at American Diplomatic or Consular posts for registration and have so registered;

(f) Were issued Cards of Registration and Identity as U.S. citizens;

(g) Were issued Certificates of Loss of Nationality of the United States by the Department of State;

(h) Applied at American Diplomatic or Consular Posts for issuance of Certificates of Witness to Marriage, and individuals who have been issued Certificates of Witness to Marriage;

(i) Were deceased individuals for whom a Report of Death of an American Citizen Abroad has been obtained;

(j) Although U.S. citizens, are not or may not be entitled under relevant passport laws and regulations to the issuance or possession of U.S. passport books, cards, or other documentation or service(s);

(k) Have previous passport records that must be reviewed before further action can be taken on their passport application or request for other consular services;

(l) Requested their own or another's passport records under FOIA or the Privacy Act, whether successfully or not; or

(m) Have corresponded with Passport Services concerning various aspects of the issuance or denial of a specific applicant's U.S. passport books or cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 8 U.S.C. 1401–1503 (2007) (Acquisition and Loss of U.S. Citizenship or U.S. Nationality; Use of U.S. Passports);

(b) 18 U.S.C. 911, 1001, 1541–1546 (2007) (Crimes and Criminal Procedure);

(c) 22 U.S.C. 211a–218, 2651a, 2705 (2007); Executive Order 11295, August 5, 1966, 31 FR 10603; (Authority of the Secretary of State in granting and issuing U.S. passports); and

(d) 8 U.S.C. 1185 (2007) (Travel Control of Citizens).

CATEGORIES OF RECORDS IN THE SYSTEM:

Passport Services maintains U.S. passport records for passports issued from 1925 to the present, as well as vital records related to births abroad, deaths, and witnesses to marriages overseas. The passport records system does not maintain evidence of travel such as entrance/exit stamps, visas, or residence permits, since this information is entered into the passport book after it is issued. The passport records system includes the following categories of records:

• Passport books and passport cards, applications for passport books and passport cards, and applications for additional visa pages, amendments, extensions, replacements, and/or renewals of passport books or cards (including all information and materials submitted as part of or with all such applications);

• Applications for registration at American Diplomatic and Consular Posts as U.S. citizens or for issuance of Cards of Identity and Registration as U.S. Citizens;

• Consular Reports of Birth Abroad of United States citizens;

• Certificates of Witness to Marriage;

• Certificates of Loss of United States Nationality;

• Oaths of Repatriation;

• Consular Certificates of Repatriation;

• Reports of Death of an American Citizen Abroad;

• Cards of Identity and Registration as U.S. citizens;

• Lookout files which identify those persons whose applications for a consular or related service require other than routine examination or action; and

• Miscellaneous materials, which are documents and/or records maintained separately, if not in the application, including but not limited to the following types of documents:

○ Investigatory reports compiled in connection with granting or denying passport and related services or prosecuting violations of passport criminal statutes;

○ Transcripts and opinions on administrative hearings, appeals and civil actions in federal courts;

○ Legal briefs, memoranda, judicial orders and opinions arising from administrative determinations relating to passports and citizenship;

○ Birth and baptismal certificates;

○ Court orders;

○ Arrest warrants;

○ Medical, personal and financial reports;

○ Affidavits;

○ Inter-agency and intra-agency memoranda, telegrams, letters, and other miscellaneous correspondence;

○ An electronic index of all passport application records created since 1978, and some passport application records created between 1962 and 1978;

○ An electronic index of Department of State Reports of Birth of American Citizens abroad; and/or

○ Records of lost and stolen passports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information maintained in the Passport Services records is used to establish the U.S. citizenship and identity of persons for a variety of legal purposes including, but not limited to, the adjudication of passport applications and requests for related services, social security benefits, employment applications, estate settlements, and federal and state law enforcement investigations.

The principal users of this information outside the Department of State include the following users:

• Department of Homeland Security for border patrol, screening, and security purposes; law enforcement, counterterrorism, and fraud prevention activities; and for verification of passport validity to support employment eligibility and identity corroboration for public and private employment;

• Department of Justice, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Marshals Service, and other components, for law enforcement, counterterrorism, border security, fraud prevention, and criminal and civil litigation activities;

• Internal Revenue Service for the current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities;

• INTERPOL and other international organizations for law enforcement, counterterrorism, fraud prevention, criminal activities related to lost and stolen passports;

• National Counterterrorism Center to support strategic operational planning and counterterrorism intelligence activities;

• Office of Personnel Management (OPM), other federal agencies, or contracted outside entities to support the investigations OPM, other federal agencies, and contractor personnel conduct for the federal government in connection with verification of employment eligibility and/or the issuance of a security clearance;

• Social Security Administration to support employment-eligibility verification for public and private employers, and for support in verification of social security numbers used in processing U.S. passport applications;

• Federal, state, local, or other agencies having information on an individual's history, nationality, or identity, to the extent necessary to obtain information from these agencies relevant to adjudicating an application for a passport or related service, or where there is reason to believe that an individual has applied for or is in possession of a U.S. passport fraudulently or has violated the law;

• Federal, state, local or other agencies for use in legal proceedings as government counsel deems appropriate, in accordance with any understanding reached by the agency with the U.S. Department of State;

• Public and private employers seeking to confirm the authenticity of the U.S. passport when it is presented as evidence of identity and eligibility to work in the United States;

• Immediate families when the information is required by an individual's immediate family;

• Private U.S. citizen ''wardens'' designated by U.S. embassies and consulates to serve, primarily in emergency and evacuation situations, as channels of communication with other U.S. citizens in the local community;

• Attorneys representing an individual in administrative or judicial passport proceedings when the individual to whom the information pertains is the client of the attorney making the request;

• Members of Congress when the information is requested on behalf of or at the request of the individual to whom the record pertains;

• Contractor personnel conducting data entry, scanning, corrections, and modifications;

• Foreign governments, to permit such governments to fulfill passport control and immigration duties and their own law enforcement, counterterrorism, and fraud prevention functions, and to support U.S. law enforcement, counterterrorism, and fraud prevention activities; and

• Government agencies other than the ones listed above that have statutory or other lawful authority to maintain such information may also receive access on a need-to-know basis; however, all information is made available to users only for a previously-established routine use.

Also see the ''Routine Uses'' paragraph of the Department of State Prefatory Statement published in the **Federal Register**.

STORAGE:

Hard copy, electronic media.

RETRIEVABILITY:

By individual name or passport book or card number.

SAFEGUARDS:

Passport records are protected by the Privacy Act of 1974, 5 U.S.C. 552a (2007). All employees of the Department of State have undergone a thorough background security investigation and contractors have background investigations in accordance with their contracts. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Passport office annexes have security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized databases is password-protected and under the responsibility of the system manager and persons who report to him or her. The system manager has the capability of viewing and printing audit trails of access from the electronic media, thereby permitting monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Office of Information Programs and Services, SA–2, 555 22nd Street, NW., Washington, DC 20522.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary of State for Passport Services, Room 5807; Department of State; 2201 C Street, NW., Washington, DC 20520–4818.

NOTIFICATION PROCEDURE:

An individual seeking to determine whether Passport Services maintains records pertaining to him/her must submit a written request for notification of whether the system of records contains a record pertaining to him/her. The body of the request must state that s/he wishes the Passport Records database to be checked, and must include the following information:

• Name;
• Date and place of birth;
• Current mailing address;
• Signature, and
• Passport number, if known.

A request to search Passport Records, STATE–26, will be treated also as a request to search Overseas Citizens Services Records, STATE–05, when it pertains to passport, registration, citizenship, birth, or death records transferred from STATE–05 to STATE–26. Requests should be mailed to the following address: Department of State, Passport Services, Law Enforcement Liaison Division, Room 500, 1111 19th Street, NW., Washington, DC 20524–1705.

Responses to such requests will consist of a letter indicating the records that exist in the passport records system.

Additional information regarding applicable fees, third-party requests, certified copies, and frequently asked

questions is available at *http://www.travel.state.gov/:passport/services/:copies/copies:_872:.html*.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves or their minor children should write to the appropriate address listed below. There are several ways individuals may gain access to or amend passport records pertaining to themselves or their minor children. First, individuals may request access to records in his/her name and the records of any minor children under the Privacy Act of 1974. 5 U.S.C. 552a (2007). Alternatively, third parties may request access to records under the guidelines of the Freedom of Information Act, 5 U.S.C. 552 (2007). Additionally, individuals may request access to their passport and/or vital records through the applicable Passport Office request process, as described below. Access may be granted to third parties to the extent provided for under applicable laws and regulations. Please refer to *http://www.travel.state.gov* for detailed information regarding applicable fees, third-party requests, certified copies, and frequently asked questions.

The appropriate methods by which passport records and vital records may be requested are as follows:

I. Privacy Act of 1974 and Freedom of Information Act

Under the Privacy Act of 1974, individuals have the right to request access to his or her records at no charge, and to request that the Department of State amend any such records that s/he believes are not accurate, relevant, timely, or complete. 5 U.S.C. 552a(d)(3) (2007). Additionally, third parties may request passport and vital records information from 1925 to the present, within the guidelines of the Privacy Act and the Freedom of Information Act, 5 U.S.C. 552 (2007). Written requests for access to or amendment of records must comply with the Department's regulations published at 22 CFR part 171.

In accordance with 22 CFR 171.32 and 171.33, amendment requests must include the following information:

- Verification of personal identity (including full name, current address, and date and place of birth), either notarized or submitted under penalty of perjury;
- Any additional information if it would be needed to locate the record at issue;
- A description of the specific correction requested;
- An explanation of why the existing record is not accurate, relevant, timely, or complete; and
- Any available documents, arguments, or other data to support the request.

Requests under the Privacy Act and/or the Freedom of Information Act must be made in writing to the following office: Office of Information Programs and Services, U.S. Department of State, SA–2, Room 8100, 515 22nd Street, NW., Washington, DC 20522–8100.

II. Access to Records through the Passport Office Request Process

A. Passport Records

1. 1925 to the Present

Individuals must submit a typed or clearly printed, notarized request that provides the following information to request passport records for themselves and/or their minor children:

- Full name at birth and any subsequent name changes, and/or the full name of any minor child or children, if requesting their records;
- Date and place of birth, and/or date and place of birth for any minor child or children;
- Current mailing address;
- Current daytime telephone number;
- Current e-mail address, if available;
- Reason for the request;
- Dates or estimated dates the passport was issued;
- Passport numbers or any other information that will help locate the records; and
- A copy of the requestor's valid photo identification.

All requests for passport records issued from 1925 to the present should be mailed to the following address: Department of State, Passport Services, Law Enforcement Liaison Division, Room 500, 1111 19th Street, NW., Washington, DC 20524–1705.

2. Prior to 1925

The National Archives and Records Administration maintains records for passport issuances prior to 1925, which may be requested by writing to the following address: National Archives and Records Administration, Archives 1, Reference Branch, 8th & Pennsylvania Ave., NW., Washington, DC.

B. Vital Records—Certificates of Birth Abroad, Report of Death, Certificate of Witness to Marriage, and Certification of No Record

Submit a signed and notarized written request including all pertinent facts of the occasion along with a copy of the requester's valid photo identification. Only the subject, parent, or legal guardian may request a birth record. The following information must be included in the request:

General Background Information

- Date of request.
- Purpose of request.
- Document Requesting (Certificate of Birth, Report of Death, Certificate of Witness of Marriage (prior to 1985), or Certification of No Record).
- Number of documents requesting.
- Current mailing address and daytime telephone number.

Facts of Birth, Death, or Marriage

- Name (at birth/death/marriage).
- Name after adoption (if applicable).
- Date of birth/death/marriage.
- Country of birth/death/marriage.
- Father's name.
- Father's date and place (state/country) of birth.
- Mother's name.
- Mother's date and place (state/country) of birth.

Previous Passport Information

- Passport used to first enter the U.S. (if applicable).
- Name of bearer.
- Date of issuance.
- Passport number.
- Date of inclusion (if applicable, and if passport was not issued to the subject).

Current Passport Information

- Name of bearer.
- Date of issuance.
- Passport number.

If requesting an amendment or correction to a Consular Report of Birth Abroad, please include certified copies of all documents appropriate for effecting the change (i.e., foreign birth certificate, marriage certificate, court ordered adoption or name change, birth certificates of adopting or legitimating parents, etc.). The original or replacement FS–240, or a notarized affidavit concerning its whereabouts also must be included.

All requests for vital records through the Passport Office request process should be mailed to the following address: U.S. Department of State, Passport Services, Vital Records Section, 1111 19th Street, NW., Suite 510, Washington, DC 20522–1705.

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records; law enforcement agencies; investigative intelligence sources, investigative security sources; and officials of foreign governments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records may be exempt from the requirements of the Privacy Act when it is necessary to:

• Protect material required to be kept secret in the interest of national defense and foreign policy;

• Prevent individuals that are the subject of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the confidence of foreign governments in the integrity of the procedures under which privileged or confidential information may be provided, and to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel; or

• Preclude impairment of the Department's effective performance in carrying out its lawful protective responsibilities under 18 U.S.C. 3056 and 22 U.S.C. 4802.

Records meeting any of the above criteria are exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) (2007). See 22 CFR 171.36(b)(1), (b)(2), and (b)(3) (2007).

Dated: December 31, 2007.

Maura Harty,

Assistant Secretary for the Bureau of Consular Affairs, Department of State.

[FR Doc. E8–202 Filed 1–8–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6056]

Privacy Act of 1974; System of Records

Summary: This report is submitted in compliance with Appendix I to OMB Circular Number A–130 entitled ''Federal Agency Responsibilities for Maintaining Records about Individuals.'' The Department of State (''Department'') intends to alter an existing system of records, ''Passport Records'' (STATE–26), to reflect additional routine uses for the information maintained in the Passport Records System.

Purpose: The information collected and maintained in the system of records entitled ''Passport Records'' is in keeping with the Department's responsibility to adjudicate applications for U.S. passports. Proposed alterations appear in the routine uses section of the system description. The purpose in granting access to other entities varies, but principally encompasses the following functions:

• To support national defense, border security, and foreign policy activities;

• To ensure the proper functioning and integrity of law enforcement, counterterrorism, and fraud-prevention activities by supporting law enforcement personnel in the conduct of their duties;

• To support the investigatory process; and

• To assist with verification of passport validity to support employment eligibility and identity corroboration for public and private employment.

This Systems of Records Notice (SORN) documents an updated list of routine uses for records maintained in the passport records system to include disclosure to the following entities:

• Department of Homeland Security for law enforcement; counterterrorism; border patrol, screening, and security purposes; fraud prevention activities; and verification of passport validity to support employment eligibility and identity corroboration for public and private employment;

• Department of Justice, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the U.S. Marshals Service, and other components, for law enforcement, counterterrorism, border security, fraud prevention, and criminal and civil litigation activities;

• INTERPOL and other international organizations for law enforcement, counterterrorism, fraud prevention, criminal activities related to lost and stolen passports;

• National Counterterrorism Center to support strategic operational planning and counterterrorism intelligence activities;

• Office of Personnel Management (OPM), other federal agencies, or contracted outside entities to support the investigations that OPM, other federal agencies, and contractor personnel conduct for the federal government in connection with verification of employment eligibility and/or the issuance of a security clearance;

• Social Security Administration to support employment-eligibility verification for public and private employers, and for support in verification of social security numbers used in processing U.S. passport applications;

• Federal, state, local or other agencies for use in legal proceedings as government counsel deems appropriate, in accordance with any understanding reached by the agency with the U.S. Department of State.

• Foreign governments, to permit such governments to fulfill passport control and immigration duties and their own law enforcement, counterterrorism, and fraud prevention functions, and to support U.S. law enforcement, counterterrorism, and fraud prevention activities.

• Public and private employers seeking to confirm the authenticity of the U.S. passport when it is presented as evidence of identity and eligibility to work in the United States;

• Contractor personnel conducting data entry, scanning, corrections, and modifications, or conducting other authorized functions related to passport records.

Authority: The authority for maintaining this system is derived from the Secretary of State's authorities with respect to the following provisions: Granting and Issuing U.S. Passports, 22 U.S.C. 211a–218, 2651a, 2705 (2007), and Executive Order 11295, August 5, 1966, 31 FR 10603; the Acquisition and Loss of U.S. Citizenship or U.S. Nationality, 8 U.S.C. 1401–1503 (2007); Travel Control of Citizens, 8 U.S.C. 1185 (2007); and Crimes and Criminal Procedure connected to U.S. Passport Applications and Use, 18 U.S.C. 911, 1001, and 1541–1546 (2007).

Impact on Privacy: The information collected and maintained in the system of records is necessary to accomplish the Department's mission as stated above. The Department believes the system offers suitably rigorous protection of privacy under the Privacy Act to the individuals covered by the system of records. Each of the above users either has been granted access to the passport database, or has been given passport information taken from the database, in order to facilitate these entities as they address issues and problems of a legal, investigative, technical, or procedural nature that may arise pursuant to an application for or any use of a U.S. passport. In granting access or providing information from the passport database to a routine user, the Department takes appropriate steps to limit disclosure to only the specific data elements required by each routine user in the performance of its mission, not all items of information that the Department maintains about an individual. To this end, the Department has established varying levels of access that are tailored to release the minimum amount of data necessary to support the attendant routine use.

Prior to granting access to the passport system of records for a proposed routine use, partner agencies generally enter into a Memorandum of Understanding (MOU) with the Department that establishes the parameters that guide and limit the use. In addition, these MOUs establish the partner agency's responsibilities in

relation to the information provided, including proper training, establishing that each user has been cleared to access the sensitive information contained in the passport records system, and ensuring that password-protected access is appropriately safeguarded by users and the agency alike.

Moreover, every user who is granted access to the system is subject to remote monitoring to ensure that s/he is accessing the system for the limited, routine use that has been prescribed in advance for each user. The overall impact on privacy is thereby minimized since each user may only access an individual's information in relation to a concrete, pre-determined purpose that has been authorized by Congress and/or established by a formal, written agreement with the Department. The Department ultimately retains control of the Passport Records System and is able to appropriately limit the amount and type of information each user is able to access. Furthermore, the responsibility and accountability for all users rests with the Directorate of Passport Services. Therefore, access and control of the Passport Records system remains within the Department to allow for appropriate internal checks and balances over all users, whether in the Department of State or at partner entities. Deviations from the predetermined routine uses are not permitted, and employees may be subject to sanctions for mishandling Privacy Act-protected information.

Safeguards: Access to the Department of State building and the annexes containing this system of records is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. These records are maintained in secured file cabinets, computer media, and/or in restricted areas, access to which is limited to authorized personnel. The computerized files are password-protected and under the direct supervision of a system manager who can monitor and audit trails of access. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. In addition, the system logs all search and query activities conducted by users, and submits notification alerts to certifying authorities and system administrators if any unusual activity occurs. Any unusual system access patterns by non-Department users are logged and may result in suspension or termination of an individual user's or an agency's access rights.

In addition, all Department employees have undergone a thorough background investigation prior to their employment. Department employees with access to the passport system are also required to undergo initial training in proper handling of this sensitive data, as well as in the correct method to maintain the security of the passport records system. All Department employees must also engage in refresher training at least annually on basic cyber security awareness, as well as training in any new security protections that may be added. As described above, partner entities also agree to provide initial and updated security training to all users who have any form of access to the passport system.

Additional safeguards regarding access to the Department and its annexes are stated in the system description.

Compatibility: The routine uses indicated are necessary for the recipients of information from the Passport Services Office to carry out their responsibilities for dealing with issues and problems of a legal, investigative, technical, or procedural nature that may arise pursuant to an application for or any use of a U.S. passport.

The Department collects data on individual passport applicants in order to establish an individual's unique identity and citizenship for passport issuance. This not only enables the Department to issue passports to qualified U.S. citizens and nationals, but it also facilitates the international travel of millions of passport holders by minimizing potential fraud in the application process, which in turn increases the value and functionality of the U.S. passport as a travel and identification document. Moreover, this database enables the Department to further support the Secure Border, Open Doors initiative by assisting border patrol officers to efficiently process returning U.S. passport holders whose identities are clearly established by their passport document, which in turn is validated by the passport records system.

The routine uses listed above are functionally equivalent to the original purpose of data collection. Passport Services gathers data in order to establish a sound basis to establish and document an individual's unique identity. The proposed routine users listed above likewise must establish an individual's identity in order to carry out their critical missions, which range from law enforcement, to border security, to verification of potential employment eligibility. For example, the U.S. passport is an I–9-listed Employment Eligibility Verification document that may be presented as proof of employment eligibility; thus, data disclosure to corroborate the passport's validity is compatible with the original purpose of collection.

Additionally, Passport Services has worked to make the U.S. passport an internationally recognized, premier travel document. Of those entities listed above, many carry out travel-related functions that are compatible with the Passport Services mission and, thus, the original purpose of the data collection. Without adequate information and documentation, these entities would be unable or less able to ascertain whether the individual seeking entry into the United States or using the passport for overseas travel, is in fact the individual s/he claims to be.

The passport records system provides a database of information that has already been well-scrutinized and evaluated by Department employees who are trained in fraud detection. Access to this thoroughly inspected database will aid the above-listed routine users as they seek to accomplish their functions. Additionally, providing other agencies the ability to confirm an individual's unique identity supports national defense, border security, and foreign policy activities, and ensures the integrity of law enforcement, counterterrorism, and fraud-prevention activities.

Dated: December 31, 2007.

Maura Harty,

Assistant Secretary for the Bureau of Consular Affairs, Department of State.

[FR Doc. E8–203 Filed 1–8–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–48]

Petition for Exemption; Summary of Petition Received; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received; correction.

SUMMARY: This notice contains a corrected summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication

of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 29, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0383 using any of the following methods:

• *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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or 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: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: This is a corrected summary of petition that was published on December 28, 2007.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 3, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0383.
Petitioner: Ameriflight, LLC.
Section of 14 CFR Affected: 14 CFR 61.51(f)(2).
Description of Relief Sought: To permit Ameriflight pilots to log second in command (SIC) flight time in aircraft types for which an SIC is not required by their type certification in specific circumstances and provided certain pilot certification, training, and checking requirements are met.

[FR Doc. E8–149 Filed 1–8–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Charleston County, SC

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Charleston County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lee, Division Administrator, Federal Highway Administration, 1835 Assembly Street, Suite 1270, Columbia, South Carolina 29201, Telephone: 803.765.5411, E-mail: *bob.lee@fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT) and Charleston County will prepare an environmental impact statement (EIS) on a proposed Mark Clark Expressway (I–526) located in Charleston County, South Carolina. The U.S. Army Corps of Engineers will serve as a cooperating agency in developing the EIS. Completing I–526 (Mark Clark Expressway) would improve mobility in the areas by serving the anticipated future traffic growth. The Interstate 526 extension project is approximately 7.1 miles long beginning at U.S. 17 (Savannah Highway) and terminating at SC 171 (Folly Road).

The FHWA and SCDOT are seeking input as a part of the scoping process to assist in identifying issues relative to this project. Letters 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. A formal public scoping meeting will be held between February and March 2008. A public meeting will be held between September and October 2008. In addition, a public hearing will be held after the approval of the Draft Environmental Impact Statement (DEIS). Public notice will be given indicating the time and place of the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on January 3, 2008.

Robert Lee,

Division Administrator, Columbia, South Carolina.

[FR Doc. E8–246 Filed 1–8–08; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2008–0001]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes two collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 10, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2008–0001] to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on ''Help'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 647–5527. Docket hours are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Susan Ryan, NHTSA, 1200 New Jersey Avenue, SE., W46–310, NTI–200, Washington, DC 20590. Ms. Ryan's telephone number is (202) 366–2715. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Highway Safety Program Cost Summary.

OMB Control Number: 2127–0003.

Affected Public: 50 States, District of Columbia, Puerto Rico, U.S. Territories, and Tribal Government.

Form Number: HS–217 Highway Safety Program Cost Summary.

Abstract: The Highway Safety Plan identifies State's traffic safety problems and describes the program and projects to address those problems. In order to account for funds expended, States are required to submit a HS–217 Highway Safety Program Cost Summary. The Program Cost Summary is completed to reflect the state's proposed allocations of funds (including carry-forward funds) by program area, based on the projects and activities identified in the Highway Safety Plan.

Estimated Annual Burden: 570.

Number of Respondents: 57.

(2) *Title:* 23 CFR, part 1345, Occupant Protection Incentive Grant—Section 405.

OMB Control Number: 2127–0600.

Affected Public: 50 States, District of Columbia, Puerto Rico, and U.S. Territories.

Form Number: N/A.

Abstract: An occupant protection incentive grant is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes, plan and/or reports on statewide seatbelt enforcement and child seat education programs and possibly some traffic court records.

Estimated Annual Burden: 780.

Number of Respondents: 56.

Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marlene Markison,

Associate Administrator for Regional Operations and Program Delivery.

[FR Doc. E8–183 Filed 1–8–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Whistleblower Office Records—Treasury/IRS 42.005.''

DATES: Comments must be received no later than February 8, 2008. This new system of records will be effective February 19, 2008 unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Director, Whistleblower Office, SE:WO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be available for inspection and copying in the Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: Director, Whistleblower Office, SE:WO,

Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: The proposed system will allow the IRS to maintain records pertinent to determining claimants' eligibility for and amount of awards pursuant to 26 U.S.C. 7623. The Whistleblower Office was created by section 406 of the Tax Relief and Health Care Act of 2006. Prior to its amendment by Section 406, 26 U.S.C. 7623 authorized the IRS to pay awards to claimants who provided information that led to the collection of taxes. The IRS maintained a decentralized procedure for processing requests for such awards. Section 406 amended 26 U.S.C. 7623 to establish criteria for the payment of certain awards, and to provide a judicial remedy in the U.S. Tax Court for review of these award determinations. Section 406 of the Act amends section 7623 of the Internal Revenue Code concerning the payment of awards to certain claimants denominated as ''whistleblowers.'' New section 7623(b) provides an award floor based on information regarding tax law violations provided by these claimants. Claimants are eligible for section 7623(b) awards based on the amount collected as a result of any administrative or judicial actions resulting from the information provided.

The Whistleblower Office has responsibility for the administration of a whistleblower program, and the Secretary is required to provide an annual report to Congress on the use of section 7623. Records pertaining to award applications filed prior to the creation of the Whistleblower Office, for which an award has not yet been determined, will also be maintained in this system of records. An exemption rule is being published separately under the rules section of the **Federal Register**.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''Treasury/IRS 42.005—Whistleblower Office Records'' is published in its entirety below.

Dated: December 21, 2007.

Peter B. McCarthy,

Assistant Secretary for Management and Chief Financial Officer.

TREASURY/IRS 42.005

SYSTEM NAME:

Whistleblower Office Records.

SYSTEM LOCATION:

Whistleblower Office, Washington, DC, and Ogden Campus, Ogden, Utah.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information about individuals who submit allegations of possible tax noncompliance and claims for award to the Whistleblower Office (''claimants''), claimants' representatives, and the taxpayers and third parties about whom the information is received, which is pertinent to a claim for award.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include claimant identity information, allegation information received, claims for award (including supporting information or documentation), information pertaining to any civil or criminal investigation initiated, or expanded, as a result of the allegations received by the Whistleblower Office, any other information pertinent to the Whistleblower Office's determination as to the amount, if any, of any award for which the claimant may be eligible under 26 U.S.C. 7623, including information pertaining to appeals of award determinations to the Tax Court (including the results of such appeals).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7623 and 7801, and 5 U.S.C. 301.

PURPOSE(S):

The records in this system will be used to administer the claimant award program under 26 U.S.C. 7623.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. To the extent authorized by 26 U.S.C. 6103, disclosure may also be made to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Data is retrieved by the name or taxpayer identification number of the claimant(s), of the taxpayer(s) who are the subject(s) of the allegation(s), or of third parties identified in the records; the name or Centralized Authorization File (CAF) number of the claimant's representative; or an award claim number assigned by the Whistleblower Office.

SAFEGUARDS:

Only persons authorized by law will have access to these records. Access controls are not less than those published in IRM 10.8.1, Information Technology (IT) Security Policy and Standards and IRM 1.16, Physical Security Program.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM 1.15.23, Records Control Schedule for Tax Administration—Examination; Item 13, Reward Claim Cases.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Whistleblower Office, SE:WO, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining whether the system contains a record pertaining to a particular individual; the records are exempt under 5 U.S.C. 552a(k)(2).

RECORDS ACCESS PROCEDURES:

This system may not be accessed for purposes of inspection or to contest the content of records; the records are exempt under 5 U.S.C. 552a(k)(2).

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORDS SOURCE CATEGORIES:

Claimants and their representatives; Department of the Treasury employees and records; newspapers, court records, and other publicly available information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

[FR Doc. E8–129 Filed 1–8–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Stop Payment/ Replacement Check Request.

DATES: Written comments should be received on or before March 12, 2008, to be assured of consideration. 200 Third Street, Avery 4–A, Parkersburg, WV 26106–5312, or e-mail to *Brian.Lallemont@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Brian Lallemont, Bureau of the Public Debt, 200 Third Street, Avery 4–A, Parkersburg, WV 26106–5312, (304) 480–8108.

SUPPLEMENTARY INFORMATION:

Title: Stop Payment/Replacement Check Request.

OMB Number: 1535–0070.

Form Number: PD F 5192.

Abstract: The information is requested to place a stop payment on a Treasury Direct check and request a replacement check.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

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 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.

Dated: January 3, 2008.

Brian Lallemont,

Records Management Program Manager.

[FR Doc. E8–242 Filed 1–8–08; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Definitive Securities.

DATES: Written comments should be received on or before March 12, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Brian Lallemont, 200 Third Street, Avery 4–A, Parkersburg, WV 26106–5312, or e-mail to *Brian.Lallemont@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Brian Lallemont, Bureau of the Public Debt, 200 Third Street, Avery 4–A, Parkersburg, WV 26106–5312, (304) 480–8108.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0059.

Form Number: PD F 1832.

Abstract: The information is requested to complete transaction involving the assignment of U.S. Registered and Bearer Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

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 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.

Dated: January 3, 2008.

Brian Lallemont,

Records Management Program Manager.

[FR Doc. E8–244 Filed 1–8–08; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VSO Access)]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA) will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested to establish computer accounts for Veteran Service Officers to access VA's Veterans Health Information Systems Technology Architecture (VistA).

DATES: Comments must be submitted on or before January 23, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (VSO Access)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (VSO Access).''

SUPPLEMENTARY INFORMATION:

Title: VSO Access to VHA Electronic Health Records, VA Form 10–0400.

OMB Control Number: 2900–New (VSO Access).

Type of Review: New collection.

Abstract: VSO's complete VA Form 10–0400 to request authorization to access VA VistA database. VA will use the data collected to provide VSO's who were granted power of attorney by veterans with medical information recorded in VHA electronic health records system, authorization to access medical information needed to process a veteran's compensation and pension claim.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 3 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 80.

Dated: January 3, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–122 Filed 1–8–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
January 9, 2008

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–1305]

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 and Home Ownership and Equity Protection Act. The goals of the amendments are to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership; ensure that advertisements for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations; and provide consumers transaction-specific disclosures early enough to use while shopping for a mortgage. The proposed revisions would apply four protections to a newly-defined category of higher-priced mortgage loans secured by a consumer's principal dwelling, including a prohibition on a pattern or practice of lending based on the collateral without regard to consumers' ability to repay their obligations from income, or from other sources besides the collateral. The proposed revisions would apply three new protections to mortgage loans secured by a consumer's principal dwelling regardless of loan price, including a prohibition on a creditor paying a mortgage broker more than the consumer had agreed the broker would receive. The Board also proposes to require that advertisements provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features; and to ban several deceptive or misleading advertising practices, including representations that a rate or payment is ''fixed'' when it can change. Finally, the proposal would require creditors to provide consumers with transaction-specific mortgage loan disclosures before they pay any fee except a reasonable fee for reviewing credit history.

DATES: Comments must be received on or before April 8, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1305, 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:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, 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: Kathleen C. Ryan, Dan S. Sokolov, or David Stein, Counsels; Jamie Z. Goodson, Brent Lattin, Jelena McWilliams, or Paul Mondor, Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposal
  A. Proposals To Prevent Unfairness, Deception, and Abuse
  B. Proposals To Improve Mortgage Advertising
  C. Proposals To Give Consumers Disclosures Early
II. Consumer Protection Concerns in the Subprime Market
  A. Recent Problems in the Mortgage Market
  B. The Loosening of Underwriting Standards
  C. Market Imperfections That Can Facilitate Abusive and Unaffordable Loans
III. The Board's Hoepa Hearings
  A. Home Ownership and Equity Protection Act (HOEPA)
  B. Summary of 2006 Hearings
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  D. Congressional Hearings
IV. Inter-Agency Supervisory Guidance
V. Legal Authority
  A. The Board's Authority Under TILA Section 129(l)(2)
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VI. Proposed Definition of ''Higher-Priced Mortgage Loan''
  A. Overview
  B. Public Comment on the Scope of New HOEPA Rules
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  E. Proposed APR Trigger for § 226.35
  F. Mechanics of the Proposed APR Trigger
VII. Proposed Rules for Higher-Priced Mortgage Loans—§ 226.35
  A. Overview
  B. Disregard of Consumers' Ability To Repay—§§ 226.34(a)(4) and 226.35(b)(1)
  C. Verification of Income and Assets Relied On—§ 226.35(b)(2)
  D. Prepayment Penalties—§ 226.32(d)(6) and (7); § 226.35(b)(3)
  E. Requirement to Escrow—§ 226.35(b)(4)
  F. Evasion Through Spurious Open-end Credit—§ 226.35(b)(5)
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  A. Creditor Payments to Mortgage Brokers—§ 226.36(a)
  B. Coercion of Appraisers—§ 226.36(b)
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  A. Other HOEPA Prohibitions
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X. Advertising
  A. Advertising Rules for Open-end Home-equity Plans—§ 226.16
  B. Advertising Rules for Closed-end Credit—§ 226.24
XI. Mortgage Loan Disclosures
  A. Early Mortgage Loan Disclosures—§ 226.19
  B. Future Plans To Improve Disclosure
XII. Civil Liability and Remedies; Administrative Enforcement
XIII. Effective Date
XIV. Paperwork Reduction Act
XV. Initial Regulatory Flexibility Analysis

I. Summary of Proposal

The Board is proposing to establish new regulatory protections for consumers in the residential mortgage market through amendments to Regulation Z, which implements the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA). The goals of the amendments are to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership; ensure that advertisements for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations; and provide consumers transaction-specific disclosures early enough to use while shopping.

A. Proposals To Prevent Unfairness, Deception, and Abuse

The Board is proposing seven new restrictions or requirements for mortgage lending and servicing intended to protect consumers against unfairness, deception, and abuse while preserving responsible lending and sustainable homeownership. The restrictions would be adopted under TILA Section 129(l)(2), which authorizes the Board to prohibit unfair or deceptive practices in connection with mortgage loans, as well as to prohibit abusive practices or practices not in the interest of the borrower in connection with refinancings. 15 U.S.C. 1639(l)(2). Some of the restrictions would apply only to higher-priced mortgage loans, while others would apply to all mortgage loans secured by a consumer's principal dwelling.

Protections Covering Higher-Priced Mortgage Loans

The Board is proposing four protections for consumers receiving higher-priced mortgage loans. These loans would be defined as consumer-purpose, closed-end loans secured by a consumer's principal dwelling and having an annual percentage rate (APR) that exceeds the comparable Treasury security by three or more percentage points for first-lien loans, or five or more percentage points for subordinate-lien loans. For higher-priced mortgage loans, the Board proposes to:

○ Prohibit creditors from engaging in a pattern or practice of extending credit without regard to borrowers' ability to repay from sources other than the collateral itself;

○ Require creditors to verify income and assets they rely upon in making loans;

○ Prohibit prepayment penalties unless certain conditions are met; and

○ Require creditors to establish escrow accounts for taxes and insurance, but permit creditors to allow borrowers to opt out of escrows 12 months after loan consummation.

In addition, the proposal would prohibit creditors from structuring closed-end mortgage loans as open-end lines of credit for the purpose of evading these rules, which do not apply to lines of credit.

Protections Covering Closed-End Loans Secured by Consumer's Principal Dwelling

In addition, in connection with all consumer-purpose, closed-end loans secured by a consumer's principal dwelling, the Board is proposing to:

○ Prohibit creditors from paying a mortgage broker more than the consumer had agreed in advance that the broker would receive;

○ Prohibit any creditor or mortgage broker from coercing, influencing, or otherwise encouraging an appraiser to provide a misstated appraisal in connection with a mortgage loan; and

○ Prohibit mortgage servicers from ''pyramiding'' late fees, failing to credit payments as of the date of receipt, failing to provide loan payoff statements upon request within a reasonable time, or failing to deliver a fee schedule to a consumer upon request.

B. Proposals To Improve Mortgage Advertising

Another goal of this proposal is to ensure that mortgage loan advertisements provide accurate and balanced information and do not contain misleading or deceptive representations. Thus the Board is proposing to require that advertisements for both open-end and closed-end mortgage loans provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. This proposal is made under the Board's general authority to adopt regulations to ensure consumers are informed about and can shop for credit. TILA Section 105(a), 15 U.S.C. 1604(a).

The Board is also proposing, under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), to prohibit the following seven deceptive or misleading practices in advertisements for closed-end mortgage loans:

○ Advertising ''fixed'' rates or payments for loans whose rates or payments can vary without adequately disclosing that the interest rate or payment amounts are ''fixed'' only for a limited period of time, rather than for the full term of the loan;

○ Comparing an actual or hypothetical consumer's current rate or payment obligations and the rates or payments that would apply if the consumer obtains the advertised product unless the advertisement states the rates or payments that will apply over the full term of the loan;

○ Advertisements that characterize the products offered as ''government loan programs,'' ''government-supported loans,'' or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans;

○ Advertisements, such as solicitation letters, that display the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender;

○ Advertising claims of debt elimination if the product advertised would merely replace one debt obligation with another;

○ Advertisements that create a false impression that the mortgage broker or lender has a fiduciary relationship with the consumer; and

○ Foreign-language advertisements in which certain information, such as a low introductory ''teaser'' rate, is provided in a foreign language, while required disclosures are provided only in English.

C. Proposal To Give Consumers Disclosures Early

A third goal of this proposal is to provide consumers transaction-specific disclosures early enough to use while shopping for a mortgage loan. The Board proposes to require creditors to provide transaction-specific mortgage loan disclosures such as the APR and payment schedule for all home-secured, closed-end loans no later than three days after application, and before the consumer pays any fee except a reasonable fee for the originator's review of the consumer's credit history.

The Board recognizes that these disclosures need to be updated to reflect the increased complexity of mortgage products. In early 2008, the Board will begin testing current TILA mortgage disclosures and potential revisions to these disclosures through one-on-one interviews with consumers. The Board expects that this testing will identify potential improvements for the Board to propose for public comment in a separate rulemaking.

II. Consumer Protection Concerns in the Subprime Market

A. Recent Problems in the Mortgage Market

Subprime mortgage loans are made to borrowers who are perceived to have high credit risk. These loans' share of total consumer originations, according to one estimate, reached about nine percent in 2001 and doubled to 20 percent by 2005, where it stayed in 2006.[1] The resulting increase in the supply of mortgage credit likely contributed to the rise in the homeownership rate from 64 percent in 1994 to a high of 69 percent in 2006—though about 68 percent now—and expanded consumers' access to the equity in their homes. Recently, however, some of this benefit has

[1] Inside Mortgage Finance Publications, Inc., *The 2007 Mortgage Market Statistical Annual* vol. I (*IMF 2007 Mortgage Market*), at 4.

eroded. In the last two years, delinquencies and foreclosure starts among subprime mortgages have increased dramatically and reached exceptionally high levels as house price growth has slowed or prices have declined in some areas. The proportion of all subprime mortgages past-due ninety days or more (''serious delinquency'') was about 13 percent in October 2007, more than double the mid-2005 level.[2] Adjustable-rate subprime mortgages have performed the worst, reaching a serious delinquency rate of nearly 19 percent in October 2007, triple the mid-2005 level. These mortgages have seen unusually high levels of early payment default, or default after only one or two payments or even no payment at all.

The serious delinquency rate has also risen for loans in alt-A (near prime) securitized pools. According to one source, originations of these loans were 13 percent of consumer mortgage originations in 2006.[3] Alt-A loans are made to borrowers who typically have higher credit scores than subprime borrowers, but the loans pose more risk than prime loans because they involve small down payments or reduced income documentation, or the terms of the loan are nontraditional and may increase risk. The rate of serious delinquency for these loans has risen to over 3 percent (as of September 2007) from 1 percent only a year ago. In contrast, 1 percent of loans in the prime-mortgage sector were seriously delinquent as of October.

The consequences of default are severe for homeowners, who face the possibility of foreclosure, the loss of accumulated home equity, higher rates for other credit transactions, and reduced access to credit. When foreclosures are clustered, they can injure entire communities by reducing property values in surrounding areas. Higher delinquencies are in fact showing through to foreclosures. Lenders initiated 430,000 foreclosures in the third quarter of 2007, about half of them on subrpime mortgages. This was significantly higher than the quarterly average of 325,000 in the first half of the year, and nearly twice the quarterly average of 225,000 for the past six years.[4]

B. The Loosening of Underwriting Standards

Rising delinquencies have been caused largely by a combination of a decline in house price appreciation—and in some areas slower economic growth—and a loosening of underwriting standards. Underwriting standards loosened in large parts of the mortgage market in recent years as lenders—particularly nondepository institutions, many of which have since ceased to exist—competed more aggressively for market share. This loosening was particularly pronounced in the subprime sector, where the frequent combination of several riskier loan attributes—high loan-to-value ratio, payment shock on adjustable-rate mortgages, no verification of borrower income, and no escrow for taxes and insurance—increased the risk of serious delinquency and foreclosure for subprime loans originated in 2005 through early 2007.

Payment shock from rate adjustments within two or three years of origination could make these loans unaffordable to many of the consumers who hold them. Approximately three-fourths of originations in securitized subprime ''pools'' from 2004 to 2006 were adjustable-rate mortgages (ARMs) with two-or three-year ''teaser'' rates followed by substantial increases in the rate and payment (so-called ''2–28'' and ''3–27'' mortgages).[5] The burden of these payment increases on the borrower would likely be heavier than expected if the borrower's stated income was inflated, as appears to have happened in some cases, and the inflated figure was used to determine repayment ability. In addition, affordability problems with subprime loans can be compounded by unexpected property tax and homeowners insurance obligations. In the prime market, lenders typically establish escrows for these obligations, but in the subprime market escrows have been the exception rather than the rule.

Delinquencies and foreclosure initiations in subprime ARMs are expected to rise further as more of these mortgages see their rates and payments reset at significantly higher levels. On average in 2008, 374,000 subprime mortgages per quarter are scheduled to undergo their first interest rate and payment reset. Relative to past years, avoiding the payment shock of an interest rate reset by refinancing the mortgage will be much more difficult. Not only have home prices flattened out or declined, thereby reducing homeowners' equity, but borrowers often had little equity to start with because of very high initial cumulative loan-to-value ratios. Moreover, prepayment penalty clauses, which are found in a substantial majority of subprime loans, place an added demand on the limited equity or other resources available to many borrowers and make it harder still for them to refinance. Borrowers who cannot refinance will have to make sacrifices to stay in their homes or could lose their homes altogether.[6]

Relaxed underwriting was not limited to the subprime market. According to one estimate, interest-only mortgages (most of them with adjustable rates) and ''option ARMs''—which permit borrowers to defer both principal and interest for a time in exchange for higher payments later—rose from 7 percent of total consumer mortgage originations in 2004 to 26 percent in 2006.[7] By one estimate these mortgages reached 78 percent of alt-A originations in 2006.[8] These types of mortgages hold the potential for payment shock and increasingly contained additional layers of risk such as loan amounts near the full appraised value of the home, and partial or no documentation of income. For example, the share of interest-only mortgages with low or no documentation in alt-A securitized pools increased from around 60 percent in 2003 to nearly 80 percent in 2006.[9] Most of these mortgages have not yet reset so their full implications are not yet apparent. The risks to consumers and to creditors were serious enough, however, to cause the federal banking agencies to issue supervisory guidance, which many state agencies later adopted.[10]

A decline in underwriting standards does not just increase the risk that consumers will be provided loans they cannot repay. It also increases the risk that originators will engage in an abusive strategy of ''flipping'' borrowers in a succession of refinancings, ostensibly to lower borrowers' burdensome payments, that strip borrowers' equity and provide them no

[2] Delinquency rates calculated from data from First American LoanPerformance on mortgages in subprime securitized pools. Figures include loans on non-owner-occupied properties.

[3] *IMF 2007 Mortgage Market,* at 4.

[4] Estimates are based on data from Mortgage Bankers' Association's *National Delinquency Survey* (2007).

[5] Figure calculated from First American Loan Performance data.

[6] These effects may be mitigated for some borrowers by a recently-announced agreement among major loan servicers and investors to ''freeze'' many subprime ARMs at their initial interest rates for five years.

[7] *IMF 2007 Mortgage Market,* at 6.

[8] David Liu & Shumin Li, *Alt-A Credit—The Other Shoe Drops?,* The MarketPulse (First American LoanPerformance, Inc., San Francisco, Cal.), Dec. 2006.

[9] Figures calculated from First American LoanPerformance data.

[10] Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609, Oct. 4, 2006.

benefit. Moreover, an atmosphere of relaxed standards may increase the incidence of abusive lending practices by attracting less scrupulous originators into the market, while at the same time bringing more vulnerable borrowers into the market. These abuses can lead consumers to pay more for their loans than their risk profiles warrant.

The market has responded to the current problems with increasing attention to loan quality. Structural factors, or market imperfections, however, make it necessary to consider regulations to help prevent a recurrence of these problems. New regulation can also provide the market clear ''rules of the road'' at a time of uncertainty, so that responsible higher-priced lending, which serves a critical need, may continue.

C. Market Imperfections That Can Facilitate Abusive and Unaffordable Loans

The recent sharp increase in serious delinquencies has highlighted the roles that structural elements of the subprime mortgage market may play in increasing the likelihood of injury to consumers who find themselves in that market. Limitations on price and product transparency in the subprime market—often compounded by misleading or inaccurate advertising—may make it harder for consumers to protect themselves from abusive or unaffordable loans, even with the best disclosures. The injuries consumers in the subprime market may suffer as a result are magnified when originators' incentives to carefully assess consumers' repayment ability grow weaker, as can happen when originators sell off their loans to be securitized. The fragmentation of the originator market can further exacerbate the problem by making it more difficult for investors to monitor originators and for lenders to monitor brokers. The multiplicity of originators and their regulators can also inhibit the ability of regulators to protect consumers from abusive and unaffordable loans.

Limited Transparency and Limits of Disclosure

Limited transparency in the subprime market increases the risk that borrowers in that market will receive unaffordable or abusive loans. The transparency of the subprime market to consumers is limited in several respects. First, price information for the subprime market is not widely and readily available to consumers. A consumer searching in the prime market can buy a newspaper or access the Internet and easily find current interest rates from a wide variety of lenders without paying a fee. In contrast, subprime rates, which can vary significantly based on the individual borrower's risk profile, are not broadly advertised. Advertising in the subprime market focuses on easy approval and low payments. Moreover, a borrower shopping in the subprime market generally cannot obtain a useful rate quote from a particular lender without submitting an application and paying a fee. The quote may not even be reliable, as loan originators sometimes use ''bait and switch'' strategies.

Second, products in the subprime market tend to be complex, both relative to the prime market and in absolute terms, as well as less standardized than in the prime market.[11] As discussed earlier, subprime originations have much more often had adjustable rates than more easily understood fixed rates. Adjustable-rate mortgages require consumers to make judgments about the future direction of interest rates and translate expected rate changes into changes in their payment amounts. Subprime loans are also far more likely to have prepayment penalties. The price of the penalty is not reflected in the annual percentage rate (APR); to calculate that price, the consumer must both calculate the size of the penalty according to a formula such as six months of interest, and assess the likelihood the consumer will move or refinance during the penalty period. In these and other ways subprime products tend to be complex for consumers.

Third, the roles and incentives of originators are not transparent. One source estimates that 60 percent or more of mortgages originated in the last several years were originated through a mortgage broker, often an independent entity, who takes loan applications from consumers and shops them to depository institutions or other lenders.[12] Anecdotal evidence indicates that consumers in both the prime and subprime markets often believe, in error, that a mortgage broker is obligated to find the consumer the best and most suitable loan terms available. For example, in a 2003 survey of older borrowers who had obtained prime or subprime refinancings, seventy percent of respondents with broker-originated refinance loans reported that they had relied ''a lot'' on their brokers to find the best mortgage for them.[13] Consumers who rely on brokers often are unaware, however, that a broker's interests may diverge from, and conflict with, their own interests. In particular, consumers are often unaware that a creditor pays a broker more to originate a loan with a rate higher than the rate the consumer qualifies for based on the creditor's underwriting criteria.

Limited shopping. In this environment of limited transparency, consumers—particularly those in the subprime market—who have been told by an originator that they will receive a loan from that originator may reasonably decide not to shop further among originators or among loan options. The costs of further shopping may be significant, including completing another application form and paying yet another application fee. Delaying receipt of funds is another cost of continuing to shop, a potentially significant one for the many borrowers in the subprime market who are seeking to refinance their obligations to lower their debt payments at least temporarily, to extract equity in the form of cash, or both.[14] Nearly 90 percent of subprime ARMs used for refinancing in recent years were ''cash out.''[15]

While the cost of continuing to shop is likely obvious, the benefit may not be

[11] U.S. Dep't of Hous. & Urban Dev. & U.S. Dep't of Treasury, *Recommendations to Curb Predatory Home Mortgage Lending* 17 (2000) (''While predatory lending can occur in the prime market, such practices are for the most part effectively deterred by competition among lenders, greater homogeneity in loan terms and the prime borrowers' greater familiarity with complex financial transactions.''); Howard Lax, Michael Manti, Paul Raca & Peter Zorn, *Subprime Lending: An Investigation of Economic Efficiency (Subprime Lending Investigation),* 15 Housing Policy Debate 3, 570 (2004) (stating that the subprime market lacks the ''overall standardization of products, underwriting, and delivery systems'' that is found in the prime market).

[12] Data reported by Wholesale Access Mortgage Research and Consulting, Inc., available at *http://www.wholesaleaccess.com/8-17-07-prs.shtml; http://www.wholesaleaccess.com/7_28_mbkr.shtml.*

[13] Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated Loans,* Data Digest No. 83 (AARP Public Policy Inst., Washington, DC), Jan. 2003, at 3, available at *http://www.aarp.org/research/credit-debt/mortgages/experiences_of_older_refinance_mortgage_loan_borro.html.*

[14] *See* Anthony Pennington-Cross & Souphala Chomsisengphet, *Subprime Refinancing: Equity Extraction and Mortgage Termination*, 35 Real Estate Economics 2, 233 (2007) (reporting that 49% of subprime refinance loans involve equity extraction, compared with 26% of prime refinance loans); Marsha J. Courchane, Brian J. Surette, and Peter M. Zorn, *Subprime Borrowers: Mortgage Transitions and Outcomes (Subprime Outcomes)*, 29 J. of Real Estate Economics 4, 368–371 (2004) (discussing survey evidence that borrowers with subprime loans are more likely to have experienced major adverse life events (marital disruption; major medical problem; major spell of unemployment; major decrease of income) and often use refinancing for debt consolidation or home equity extraction); *Subprime Lending Investigation*, at 551–552 (citing survey evidence that borrowers with subprime loans have increased incidence of major medical expenses, major unemployment spells, and major drops in income).

[15] Figure calculated from First American LoanPerformance data.

clear or may appear quite small. Without easy access to subprime product prices, a consumer who has been offered a loan by one originator may have only a limited idea whether further shopping is likely to produce a better deal. Moreover, consumers in the subprime market have reported in studies that they were turned down by several lenders before being approved.[16] Once approved, these consumers may see little advantage to continuing to shop if they expect, based on their experience, that many of their applications to other originators would be turned down. Furthermore, if a consumer uses a broker and believes that the broker is shopping for the consumer, the consumer may believe the chance of finding a better deal than the broker is small. An unscrupulous originator may also seek to discourage a consumer from shopping by intentionally understating the cost of an offered loan. For all of these reasons, borrowers in the subprime market may not shop beyond the first approval and may be willing to accept unfavorable terms.[17]

Limited focus. Consumers considering obtaining a typically complex subprime mortgage loan may simplify their decision by focusing on a few attributes of the product or service that seem most important.[18] A consumer may focus on loan attributes that have the most obvious and immediate consequence such as loan amount, down payment, initial monthly payment, initial interest rate, and up-front fees (though up-front fees may be more obscure when added to the loan amount, and ''discount points'' in particular may be difficult for consumers to understand). These consumers, therefore, may not focus on terms that may seem less immediately important to them such as future increases in payment amounts or interest rates, prepayment penalties, and negative amortization. They are also not likely to focus on underwriting practices such as income verification, and on features such as escrows for future tax and insurance obligations.[19] Consumers who do not fully understand such terms and features, however, are less able to appreciate their risks, which can be significant. For example, the payment may increase sharply and a prepayment penalty may hinder the consumer from refinancing to avoid the payment increase. Thus, consumers may unwittingly accept loans that they will have difficulty repaying.

Limits of disclosure. Disclosures describing the multiplicity of features of a complex loan could help some consumers in the subprime market, but disclosures may not be sufficient to protect them against unfair loan terms or lending practices. Obtaining widespread consumer understanding of the many potentially significant features of a typical subprime product is a major challenge.[20] Moreover, even if all of a loan's features are disclosed clearly to consumers, they may continue to focus on a few features that appear most significant. Alternatively, disclosing all features may ''overload'' consumers and make it more difficult for them to discern which features are most important.

Furthermore, a consumer cannot make effective use of disclosures without having a certain minimum level of understanding of the market and products. Disclosures themselves, likely cannot provide this minimum understanding for transactions that are complex and that consumers engage in infrequently. Moreover, consumers may rely more on their originators to explain the disclosures when the transaction is complex; some originators may have incentives to misrepresent the disclosures so as to obscure the transaction's risks to the consumer; and such misrepresentations may be particularly effective if the originator is face-to-face with the consumer.[21] Therefore, while the Board anticipates proposing changes to Regulation Z to improve mortgage loan disclosures, it appears unlikely that better disclosures, alone, will address adequately the risk of abusive or unaffordable loans in the subprime market.

Misaligned Incentives and Obstacles to Monitoring

Not only are consumers in the subprime market often unable to protect themselves from abusive or unaffordable loans, originators may at certain times be more likely to extend unaffordable loans. The recent sharp rise in serious delinquencies on subprime mortgages has made clear that originators may not give adequate attention to repayment ability if they sell the mortgages they originate and bear little loss if the mortgages default. The growth of the secondary market gave lenders—and, thus, mortgage borrowers—greater access to capital markets, lowered transaction costs, and allowed risk to be shared more widely. This ''originate-to-distribute'' model, however, may also tend to contribute to the loosening of underwriting standards, particularly during periods of rapid house price appreciation, which may mask problems by keeping default and delinquency rates low until price appreciation slows or reverses.

This potential tendency has several related causes. First, when an originator sells a mortgage and its servicing rights, depending on the terms of the sale, most or all of the risks typically are passed on

[16] James M. Lacko & Janis K. Pappalardo, Fed. Trade Comm'n, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms (Improving Mortgage Disclosures)*, 24–26 (2007) (reporting evidence based on qualitative consumer interviews); Subprime Lending Investigation, at 550 (finding based on survey data that ''[p]robably the most significant hurdle overcome by subprime borrowers * * * is just getting approved for a loan for the first time. This impact might well make subprime borrowers more willing to accept less favorable terms as they become uncertain about the possibility of qualifying for a loan at all.'').

[17] *Subprime Outcomes*, at 371–372 (reporting survey evidence that relative to prime borrowers, subprime borrowers are less knowledgeable about the mortgage process, search less for the best rates, and feel they have less choice about mortgage terms and conditions); *Subprime Mortgage Investigation*, at 554 (''Our focus groups suggested that prime and subprime borrowers use quite different search criteria in looking for a loan. Subprime borrowers search primarily for loan approval and low monthly payments, while prime borrowers focus on getting the lowest available interest rate. These distinctions are quantitatively confirmed by our survey.'').

[18] Jinkook Lee & Jeanne M. Hogarth, *Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else? (Consumer Information Search)*, Financial Services Review 291 (2000) (''In all, there are dozens of features and costs disclosed per loan, far in excess of the combination of terms, lenders, and information sources consumers report using when shopping.'').

[19] *Consumer Information Search*, at 285 (reporting survey evidence that most consumers compared interest rate or APR, loan type (fixed-rate or ARM), and mandatory up-front fees, but only a quarter considered the costs of optional products such as credit insurance and back-end costs such as late fees). There is evidence that borrowers are not aware of, or do not understand, terms of this nature even after they have obtained a loan. *See Improving Mortgage Disclosures*, at 27–30 (discussing anecdotal evidence based on consumer interviews that borrowers were not aware of, did not understand, or misunderstood an important cost or feature of their loans that had substantial impact on the overall cost, the future payments, or the ability to refinance with other lenders); Brian Bucks & Karen Pence, *Do Homeowners Know Their House Values and Mortgage Terms?* 18–22 (Fed. Reserve Bd. of Governors Fin. and Econ. Discussion Series Working Paper No. 2006–3, 2006) (discussing statistical evidence that borrowers with ARMs underestimate annual as well as life-time caps on the interest rate; the rate of underestimation increases for lower-income and less-educated borrowers), available at *http://www.federalreserve.gov/pubs/feds/2006/200603/200603pap.pdf*.

[20] *Improving Mortgage Disclosures*, at 74–76 (finding that borrowers in the subprime market may have more difficulty understanding their loan terms because their loans are more complex than loans in the prime market).

[21] U.S. Gen. Accounting Office, GAO 04–280, *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending* 97–98 (2004) (stating that the inherent complexity of mortgage loans, some borrowers' lack of financial sophistication, education, or infirmities, and misleading statements and actions by lenders and brokers limit the effectiveness of even clear and transparent disclosures).

to the loan purchaser. Thus, originators who sell loans may have less of an incentive to undertake careful underwriting than if they kept the loans. Second, warranties by sellers to purchasers and other ''repurchase'' contractual provisions have little meaningful benefit if originators have limited assets. Third, fees for some loan originators have been tied to loan volume, making loan sales—sometimes accomplished through aggressive ''push marketing''—a higher priority than loan quality for some originators. Fourth, investors may not exercise adequate due diligence on mortgages in the pools in which they are invested, and may instead rely heavily on credit-ratings firms to determine the quality of the investment.

The fragmentation of the originator market can further exacerbate the problem. Data reported under HMDA show that independent mortgage companies—those not related to depository institutions or their subsidiaries or affiliates—made nearly one-half of higher-priced first-lien mortgages in 2005 and 2006 but only one-fourth of loans that were not higher-priced. Nor was lending by independent mortgage companies particularly concentrated: In each of 2005 and 2006 around 150 independent mortgage companies made 500 or more higher-priced first-lien mortgage loans on owner-occupied dwellings. In addition, one source suggests that 60 percent or more of mortgages originated in the last several years were originated through a mortgage broker.[22] This same source estimates the number of brokerage companies at over 50,000 in recent years.

Thus, a securitized pool of mortgages may have been sourced by tens of lenders and thousands of brokers. Investors have limited ability to directly monitor these originators' activities. Similarly, a lender may receive a handful of loans from each of hundreds or thousands of small brokers every year. A lender has limited ability or incentive to monitor every small brokerage's operations and performance.

Government oversight of such a fragmented originator market faces significant challenges. The various lending institutions and brokers operate in fifty different states and the District of Columbia with different regulatory and supervisory regimes, varying resources for supervision and enforcement, and different practices in sharing information among regulators. State regulatory regimes come under particular pressure when a booming market brings new lenders and brokers into the marketplace more rapidly than regulators can increase their oversight resources. These circumstances may inhibit the ability of regulators to protect consumers from abusive and unaffordable loans.

A Role for New HOEPA Rules

As explained above, consumers in the subprime market face serious constraints on their ability to protect themselves from abusive or unaffordable loans, even with the best disclosures; originators themselves may at times lack sufficient market incentives to ensure loans they sell are affordable; and regulators face limits on their ability to oversee a fragmented subprime origination market. These circumstances appear to warrant imposing a new national legal standard on subprime lenders to help ensure that consumers receive mortgage loans they can afford to repay, and help prevent the equity-stripping abuses that unaffordable loans facilitate. Adopting this standard under authority of HOEPA would ensure that it applied uniformly to all originators and provide consumers an opportunity to redress wrongs through civil actions to the extent authorized by TILA. As explained in the next part, substantial information supplied to the Board through several public hearings confirms the need for new HOEPA rules.

III. The Board's HOEPA Hearings

A. Home Ownership and Equity Protection Act (HOEPA)

The Board has recently held extensive public hearings on consumer protection issues in the mortgage market, including the subprime sector. These hearings were held pursuant to the Home Ownership and Equity Protection Act (HOEPA), which directs the Board to hold public hearings periodically on the home equity lending market and the adequacy of existing law for protecting the interests of consumers, particularly low income consumers. HOEPA imposes substantive restrictions, and special pre-closing disclosures, on particularly high-cost refinancings and home equity loans (''HOEPA loans'').[23] These restrictions include limitations on prepayment penalties and ''balloon payment'' loans, and prohibitions of negative amortization and of engaging in a pattern or practice of lending based on the collateral without regard to repayment ability.

When it enacted HOEPA, Congress granted the Board authority, codified in TILA Section 129(l), to create exemptions to HOEPA's restrictions and to expand its protections. 15 U.S.C. 1639(l). Under TILA Section 129(l)(1), the Board may create exemptions to HOEPA's restrictions as needed to keep responsible credit available; and under TILA Section 129(l)(2), the Board may adopt new or expanded restrictions as needed to protect consumers from unfairness, deception, or evasion of HOEPA. In HOEPA Section 158, Congress directed the Board to monitor changes in the home equity market through regular public hearings.

Hearings the Board held in 2000 led the Board to expand HOEPA's protections in December 2001.[24] Those rules, which took effect in 2002, lowered HOEPA's rate trigger, expanded its fee trigger to include single-premium credit insurance, added an anti-''flipping'' restriction, and improved the special pre-closing disclosure.

B. Summary of 2006 Hearings

In the summer of 2006, the Board held four hearings in four cities on three broad topics: (1) The impact of the 2002 HOEPA rule changes on predatory lending practices, as well as the effects on consumers of state and local predatory lending laws; (2) nontraditional mortgage products and reverse mortgages; and (3) informed consumer choice in the subprime market. Hearing panelists included mortgage lenders and brokers, credit ratings agencies, real estate agents, consumer advocates, community development groups, housing counselors, academicians, researchers, and state and federal government officials. In addition, consumers, housing counselors, brokers, and other individuals made brief statements at the hearings during an ''open mike'' period. In all, 67 individuals testified on panels and 54 comment letters were submitted to the Board.

Consumer advocates and some state officials stated that HOEPA is generally effective in preventing abusive terms in loans subject to the HOEPA price triggers. They noted, however, that very

[22] Data reported by Wholesale Access Mortgage Research and Consulting, Inc. Available at *http://www.wholesaleaccess.com/8-17-07-prs.shtml; http://www.wholesaleaccess.com/7_28_mbkr.shtml.*

[23] HOEPA loans are closed-end, non-purchase money mortgages secured by a consumer's principal dwelling (other than a reverse mortgage) where either: (a) *The* APR at consummation will exceed the yield on Treasury securities of comparable maturity by more than 8 percentage points for first-lien loans, or 10 percentage points for subordinate-lien loans; or (b) the total points and fees payable by the consumer at or before closing exceed the greater of 8 percent of the total loan amount, or $547 for 2007 (adjusted annually).

[24] Truth in Lending, 66 FR 65604, 65608, Dec. 20, 2001.

few loans are made with rates or fees at or above the HOEPA triggers, and some advocated that Congress lower them. Consumer advocates and state officials also urged regulators and Congress to curb abusive practices in the origination of loans that do not meet HOEPA's price triggers.

Consumer advocates identified several particular areas of concern. They urged the Board to prohibit or restrict certain loan features or terms, such as prepayment penalties, and underwriting practices such as ''stated income'' or ''low documentation'' (''low doc'') loans for which the borrower's income is not documented or verified. They also expressed concern about aggressive marketing practices such as steering borrowers to higher-cost loans by emphasizing initial low monthly payments based on an introductory rate without adequately explaining that the consumer will owe considerably higher monthly payments after the introductory rate expires.

Some consumer advocates stated that brokers and lenders should be held to a higher duty such as a duty of good faith and fair dealing or a duty to make only loans suitable for the borrower. These advocates also urged the Board to ban ''yield spread premiums,'' payments that brokers receive from the lender at closing for delivering a loan with an interest rate that is higher than the lender's ''buy rate,'' because they provide brokers an incentive to increase consumers' interest rates. They argued that such steps would align reality with consumers' perceptions that brokers serve their best interests. Consumer advocates also expressed concerns that brokers, lenders, and others may coerce appraisers to misrepresent the value of a dwelling; and that servicers may charge consumers unwarranted fees and in some cases make it difficult for consumers who are in default to avoid foreclosure.

Industry panelists and commenters, on the other hand, expressed concern that state predatory lending laws may reduce the availability of credit for some subprime borrowers. Most industry commenters opposed prohibiting stated income loans, prepayment penalties, or other loan terms, asserting that this approach would harm borrowers more than help them. They urged the Board and other regulators to focus instead on enforcing existing laws to remove ''bad actors'' from the market. Some lenders indicated, however, that restrictions on certain features or practices might be appropriate if the restrictions were clear and narrow. Industry commenters also stated that subjective suitability standards would create uncertainties for brokers and lenders and subject them to excessive litigation risk.

C. Summary of June 2007 Hearing

In light of the information received at the 2006 hearings and the rise in defaults that began soon after, the Board held an additional hearing in June 2007 to explore how it could use its authority under HOEPA to prevent abusive lending practices in the subprime market while still preserving responsible subprime lending. The Board focused the hearing on four specific areas: Lenders' determination of borrowers' repayment ability; ''stated income'' and ''low doc'' lending; the lack of escrows in the subprime market relative to the prime market; and the high frequency of prepayment penalties in the subprime market.

At the hearing, the Board heard from 16 panelists representing consumers, mortgage lenders, mortgage brokers, and state government officials, as well as from academicians. The Board also received almost 100 written comments after the hearing from an equally diverse group.

Industry representatives acknowledged concerns with recent lending practices but urged the Board to address most of these concerns through supervisory guidance rather than regulations under HOEPA. They maintained that supervisory guidance, unlike regulation, is flexible enough to preserve access to responsible credit. They also suggested that supervisory guidance issued recently regarding nontraditional mortgages and subprime lending, as well as market self-correction, have reduced the need for new regulations. Industry representatives support improving mortgage disclosures to help consumers avoid abusive loans. They urged that any substantive rules adopted by the Board be clearly drawn to limit uncertainty and narrowly drawn to avoid unduly restricting credit.

In contrast, consumer advocates, state and local officials, and Members of Congress urged the Board to adopt regulations under HOEPA. They acknowledged a proper place for guidance but contended that recent problems indicate the need for requirements enforceable by borrowers through civil actions, which HOEPA enables and guidance does not. They also expressed concern that less responsible, less closely supervised lenders are not subject to the guidance and that there is limited enforcement of existing laws for these entities. Consumer advocates and others welcomed improved disclosures but insisted they would not prevent abusive lending. More detailed accounts of the testimony and letters are provided below in the context of specific issues the Board is proposing to address.

D. Congressional Hearings

Congress has also held a number of hearings in the past year about consumer protection concerns in the mortgage market.[25] In these hearings, Congress has heard testimony from individual consumers, representatives of consumer and community groups, representatives of financial and mortgage industry groups and federal and state officials. These hearings have focused on rising subprime foreclosure rates and the extent to which lending practices have contributed to them.

Consumer and community group representatives testified that certain lending terms or practices, such as hybrid adjustable-rate mortgages, prepayment penalties, low or no documentation loans, lack of escrows for taxes and insurance, and failure to consider the consumer's ability to repay have contributed to foreclosures. In addition, these witnesses testified that consumers often believe that mortgage brokers represent their interests and shop on their behalf for the best loan terms. As a result, they argue that consumers do not shop independently to ensure that they are getting the best terms for which they qualify. They also

[25] *E.g.*, *Progress in Administration and Other Efforts to Coordinate and Enhance Mortgage Foreclosure Prevention: Hearing before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Legislative Proposals on Reforming Mortgage Practices: Hearing before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Legislative and Regulatory Options for Minimizing and Mitigating Mortgage Foreclosures: Hearing before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Ending Mortgage Abuse: Safeguarding Homebuyers: Hearing before the S. Subcomm. on Hous., Transp., and Cmty. Dev. of the S. Comm. on Banking, Hous., and Urban Affairs*, 110th Cong. (2007); *Improving Federal Consumer Protection in Financial Services: Hearing before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *The Role of the Secondary Market in Subprime Mortgage Lending: Hearing before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Possible Responses to Rising Mortgage Foreclosures: Hearing before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Subprime Mortgage Market Turmoil: Examining the Role of Securitization: Hearing before the Subcomm. on Secs., Ins., and Inv. of the S. Comm. on Banking, Hous., and Urban Affairs*, 110th Cong. (2007); *Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Financial Institutions: Hearing before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *Mortgage Market Turmoil: Causes and Consequences, Hearing before the S. Comm. on Banking, Hous., and Urban Affairs*, 110th Cong. (2007); *Preserving the American Dream: Predatory Lending Practices and Home Foreclosures, Hearing before the S. Comm. on Banking, Hous., and Urban Affairs*, 110th Cong. (2007).

testified that, because originators sell most loans into the secondary market and do not share the risk of default, brokers and lenders have less incentive to ensure consumers can afford their loans.

Financial services and mortgage industry representatives testified that consumers need better disclosures of their loan terms, but that substantive restrictions on subprime loan terms would risk reducing access to credit for some borrowers. In addition, these witnesses testified that applying a fiduciary duty to the subprime market, such as requiring that a loan be in the borrower's best interest, would introduce subjective standards that would significantly increase compliance and litigation risk. According to these witnesses, some lenders would be less willing to offer loans in the subprime market, making it harder for some consumers to get loans.

IV. Inter-Agency Supervisory Guidance

In December 2005, the Board and the other federal banking agencies responded to concerns about the rapid growth of nontraditional mortgages in the previous two years by proposing supervisory guidance. Nontraditional mortgages are mortgages that allow the borrower to defer repayment of principal and sometimes interest. The guidance advised institutions of the need to reduce ''risk layering'' practices with respect to these products, such as failing to document income or lending nearly the full appraised value of the home. The proposal, and the final guidance issued in September 2006, specifically advised lenders that layering risks in nontraditional mortgage loans to subprime borrowers may significantly increase risks to borrowers as well as institutions.[26]

The Board and the other federal banking agencies addressed concerns about the subprime market more broadly in March 2007 with a proposal addressing the heightened risks to consumers and institutions of ARMs with two or three-year ''teaser'' rates followed by substantial increases in the rate and payment. The guidance, finalized in June, sets out the standards institutions should follow to ensure borrowers in the subprime market obtain loans they can afford to repay.[27] Among other steps, the guidance advises lenders to (1) use the fully-indexed rate and fully-amortizing payment when qualifying borrowers for loans with adjustable rates and potentially non-amortizing payments; (2) limit stated income and reduced documentation loans to cases where mitigating factors clearly minimize the need for full documentation of income; (3) provide that prepayment penalty clauses expire a reasonable period before reset, typically at least 60 days.

The Conference of State Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR) issued parallel statements for state supervisors to use with state-supervised entities, and many states have adopted the statements.

The guidance issued by the federal banking agencies has helped to promote safety and soundness and protect consumers in the subprime market. Guidance, however, is not necessarily implemented uniformly by all originators. Originators who are not subject to routine examination and supervision may not adhere to guidance as closely as originators who are. Guidance also does not provide individual consumers who have suffered harm because of abusive lending practices an opportunity for redress. The new and expanded consumer protections that the Board is proposing would apply uniformly to all creditors and be enforceable by federal and state supervisory and enforcement agencies and in many cases by borrowers.

V. Legal Authority

A. The Board's Authority Under TILA Section 129(l)(2)

The substantive limitations in new proposed §§ 226.35 and 226.36 and corresponding revisions proposed for existing § 226.32, as well as proposed restrictions on misleading and deceptive advertisements, would be based on the Board's authority under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2). That provision gives the Board authority to prohibit acts or practices in connection with:

- Mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of HOEPA; and
- Refinancing of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.

The authority granted to the Board under Section 129(l)(2), 15 U.S.C. 1639(l)(2), is broad both in absolute terms and relative to HOEPA's statutory prohibitions. For example, this authority reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA Section 103(aa), 15 U.S.C. 1602(aa), as well as types of mortgage loans not covered under that section, such as home purchase loans. Nor is the Board's authority limited to regulating specific contractual terms of mortgage loan agreements; it extends to regulating loan-related practices generally, within the standards set forth in the statute. Moreover, while HOEPA's current restrictions apply only to creditors and only to loan terms or lending practices, TILA Section 129(l)(2) is not limited to creditors, nor is it limited to loan terms or lending practices. *See* 15 U.S.C. 1639(l)(2). It authorizes protections against unfair or deceptive practices when such practices are ''in connection with mortgage loans,'' and it authorizes protections against abusive practices ''in connection with refinancing of mortgage loans.''

HOEPA does not set forth a standard for what is unfair or deceptive, but the Conference Report for HOEPA indicates that, in determining whether a practice in connection with mortgage loans is unfair or deceptive, the Board should look to the standards employed for interpreting state unfair and deceptive trade practices acts and the Federal Trade Commission Act, Section 5(a), 15 U.S.C. 45(a).[28]

Congress has codified standards developed by the Federal Trade Commission for determining whether acts or practices are unfair under Section 5(a), 15 U.S.C. 45(a).[29] Under the Act, an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC is permitted to consider established public policies, but public policy considerations may not serve as the primary basis for an unfairness determination.[30]

The FTC has interpreted these standards to mean that consumer injury is the central focus of any inquiry regarding unfairness.[31] Consumer injury may be substantial if it imposes a small harm on a large number of consumers, or if it raises a significant risk of

[26] Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609, Oct. 4, 2006.

[27] Statement on Subprime Mortgage Lending, 72 FR 37569, Jul. 10, 2007.

[28] H.R. Rep. 103–652, at 162 (1994) (Conf. Rep.).

[29] *See* 15 U.S.C. 45(n); Letter from FTC to the Hon. Wendell H. Ford and the Hon. John C. Danforth (Dec. 17, 1980).

[30] 15 U.S.C. 45(n).

[31] Statement of Basis and Purpose and Regulatory Analysis, Credit Practices Rule (Credit Practices Rule), 42 FR 7740, 7743 March 1, 1984.

concrete harm.[32] The FTC looks to whether an act or practice is injurious in its net effects.[33] The agency has also observed that an unfair act or practice will almost always reflect a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[34] In evaluating unfairness, the FTC looks to whether consumers' free market decisions are unjustifiably hindered.[35]

The FTC has also adopted standards for determining whether an act or practice is deceptive (though these standards, unlike unfairness standards, have not been incorporated into the FTC Act).[36] First, there must be a representation, omission or practice that is likely to mislead the consumer. Second, the act or practice is examined from the perspective of a consumer acting reasonably in the circumstances. Third, the representation, omission, or practice must be material. That is, it must be likely to affect the consumer's conduct or decision with regard to a product or service.[37]

Many states also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes employ a variety of standards, many of them different from the standards currently applied to the FTC Act. A number of states follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; and causes substantial injury to consumers.[38] Some states require that a finding of deception be supported by a showing of intent to deceive, while other states only require showing that an act or practice is capable of being interpreted in a misleading way.[39]

In proposing rules under TILA Section 129(l)(2)(A), 15 U.S.C. 1639(l)(2)(A), the Board has considered the standards currently applied to the FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied to similar state statutes.

B. The Board's Authority Under TILA Section 105(a)

Other aspects of this proposal are based on the Board's general authority under TILA Section 105(a) to prescribe regulations necessary or proper to carry out TILA's purposes. 15 U.S.C. 1604(a). This section is the basis for the proposal to require early disclosures for residential mortgage transactions as well as many of the proposals to improve advertising disclosures. These proposals are intended to carry out TILA's purposes of informing consumers about their credit terms and helping them shop for credit. See TILA Section 102, 15 U.S.C. 1603.

VI. Proposed Definition of ''Higher-Priced Mortgage Loan''

A. Overview

The Board proposes to extend certain consumer protections to a subset of consumer residential mortgage loans referred to as ''higher-priced mortgage loans.'' A creditor would be prohibited from engaging in a pattern or practice of making higher-priced mortgage loans based on the collateral without regard to repayment ability. A creditor would also be prohibited from making an individual higher-priced mortgage loan without: Verifying the consumer income and assets the creditor relied upon to make the loan; and establishing an escrow account for taxes and insurance. In addition, a higher-priced mortgage loan would not be permitted to have a prepayment penalty except under certain conditions. Finally, a creditor would be prohibited from structuring a closed-end mortgage loan as an open-end line of credit for the purpose of evading the restrictions on higher-priced mortgage loans, which would not apply to open-end lines of credit.

This part VI discusses the proposed definition of a ''higher priced mortgage loan'' and a discussion of the specific protections that would apply to these loans follows in part VII. The Board is proposing to apply certain other restrictions to closed-end consumer mortgage loans secured by the consumer's principal dwelling without regard to loan price. These restrictions are discussed separately in part VIII.

Higher-priced mortgage loans would be defined as consumer credit transactions secured by the consumer's principal dwelling for which the APR on the loan exceeds the yield on comparable Treasury securities by at least three percentage points for first-lien loans, or five percentage points for subordinate lien loans. The proposed definition would include home purchase loans, refinancings of loans, and home equity loans. The definition would exclude home equity lines of credit (''HELOCs''). In addition, there would be exclusions for reverse mortgages, construction-only loans, and bridge loans.

The definition of ''higher-priced mortgage loans'' would appear in proposed § 226.35(a). Such loans would be subject to the restrictions and requirements in § 226.35(b) concerning repayment ability, income verification, prepayment penalties, escrows, and evasion, except that subordinate-lien higher-priced mortgage loans would not be subject to the escrow requirement.

B. Public Comment on the Scope of New HOEPA Rules

The June 14, 2007 hearing notice solicited comment on the following questions concerning coverage:

- Whether terms or practices discussed in the hearing notice should be prohibited or restricted for all mortgage loans, or only for loans offered to subprime borrowers?
- Whether terms or practices should be prohibited or restricted for loans to first-time homebuyers, home purchase loans, or refinancings and home equity loans?
- Whether terms or practices should be prohibited or restricted only for certain products, such as adjustable-rate mortgages or nontraditional mortgages?

Many commenters addressed the scope of any rules the Board might propose. Some consumer and community groups favored applying some or all prohibitions to the entire mortgage market, though other groups recommended that certain protections (e.g., for repayment ability) be applied to the entire market and others (e.g., for escrows) only to subprime and nontraditional loans. In general, financial institutions and financial services groups maintained that new rules should not be applied to the entire market.

Most commenters suggested that, to the extent the Board targets subprime

[32] Letter from Commissioners of the FTC to the Hon. Wendell H. Ford, Chairman, and the Hon. John C. Danforth, Ranking Minority Member, Consumer Subcomm. of the H. Comm. on Commerce, Science, and Transp., n.12 (Dec. 17, 1980).

[33] Credit Practices Rule, 42 FR at 7744.

[34] *Credit Practices Rule at 7744.*

[35] *Credit Practices Rule at 7744.*

[36] Letter from James C. Miller III, Chairman, FTC to the Hon. John D. Dingell, Chairman, H. Comm. on Energy and Commerce (Dingell Letter) (Oct. 14, 1983).

[37] Dingell Letter at 1–2.

[38] *See, e.g., Kenai Chrysler Ctr., Inc.* v. *Denison,* 167 P.3d 1240, 1255 (2007) (quoting *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244–45 n.5 (1972)); *State* v. *Moran,* 151 N.H. 450, 452, 861 A.2d 763, 755–56 (2004) (concurrently applying the FTC's former test and a test under which an act or practice is unfair or deceptive if ''the objectionable conduct * * * attain[s] a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.'') (citation omitted); *Robinson* v. *Toyota Motor Credit Corp.,* 201 Ill. 2d 403, 417–418, 775 N.E.2d 951, 961–62 (2002) (quoting 405 U.S. at 244–45 n.5).

[39] *Compare Robinson,* 201 Ill. 2d at 417 (showing of intent to deceive required under Illinois Consumer Fraud Act) *with Kenai Chrysler Ctr.,* 167 P.3d at 1255 (no showing of intent to deceive required under Alaska Unfair Trade Practices Act).

loans, it do so based on loan characteristics rather than borrower characteristics such as credit score. Some commenters proposed that coverage be determined by a loan's annual percentage rate (APR) and suggested various approaches based on lender reporting of ''higher-priced loans'' under Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). Several industry commenters, however, pointed out drawbacks of using an approach based on HMDA reporting and advocated instead that the Board cover only loans with ''payment shock.''

C. General Principles Governing the Board's Determination of Coverage

Four main principles will guide the Board's determination of appropriate coverage. First, new regulations should be applied as broadly as needed to protect consumers from actual or potential injury, but not so broadly that the costs, including the always-present risk of unintended consequences, would clearly outweigh the benefits. Evidence that consumers have actually been injured by a particular practice in a particular market segment is important to determining proper coverage. Protection may also be needed in a particular segment, however, to prevent potential future injury in that segment or to limit adverse effects should lenders circumvent protections applied to another segment.

Second, the most practical and effective way to protect borrowers is to apply protections based on loan characteristics, rather than borrower characteristics. Identifying a class of protected borrowers would present operational difficulties and other problems. For example, it is common to distinguish borrowers by credit score, with lower-scoring borrowers generally considered to be at higher risk of injury in the mortgage market. Defining the protected field as lower-scoring consumers would fail to protect higher-scoring consumers ''steered'' to loans meant for lower-scoring consumers. Moreover, the market uses different commercial scores, and choosing a particular score as the benchmark for a regulation could give unfair advantage to the company that provides that score.

Third, the rule identifying higher-priced loans should be as simple as reasonably possible, consistent with protecting consumers and minimizing costs. For the sake of simplicity, the same coverage rule should apply to all new protections except where the benefit of tailoring coverage criteria to specific protections outweighs the increased complexity.

Fourth, the rule should give lenders a reasonable degree of certainty during the application process regarding whether a transaction, when completed, will be covered by a particular protection. For some protections, reasonable certainty may be needed early in the application process; for other protections, it may not be needed until later. Reasonable certainty does not mean complete certainty. A rule that would provide lenders complete certainty about coverage early in the application process is likely not achievable.

D. Types of Loans Proposed To Be Covered Under § 226.35

The Board's proposed definition of ''higher-priced mortgage loan'' has two main aspects. The first aspect is loan type—the definition includes certain types of loans (such as home purchase loans) and excludes others (such as HELOCs). The second aspect is loan price—the definition includes only loans with APRs exceeding specified thresholds. The first aspect of the definition, loan type, is discussed immediately below, and the second is discussed thereafter.

The Board proposes to apply the protections of § 226.35 to first-lien, as well as subordinate-lien, closed-end mortgage loans secured by the consumer's principal dwelling, including home purchase loans, refinancings of loans, and home equity loans. The proposed definition would not cover loans that do not have primarily a consumer purpose, such as loans for real estate investment. The proposed definition also would not cover HELOCs, reverse mortgages, construction-only loans, or bridge loans.

Coverage of Home Purchase Loans, Refinancings, and Home Equity Loans

The statutory protections for HOEPA loans are generally limited to closed-end refinancings and home equity loans. *See* TILA Section 103(aa), 15 U.S.C. 1602(aa). The Board proposes to apply the protections of § 226.35 to loans of these types, which have historically presented the greatest risk to consumers. These loans are often made to consumers who have home equity and, therefore, have an existing asset at risk. These loans also can be marketed aggressively by originators to homeowners who may not benefit from them and who, if responding to the marketing and not shopping independently, may have limited information about their options.

The Board proposes to use its authority under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), to cover home purchase loans as well. Covering only refinancings of home purchase loans would fail to protect consumers adequately. From 2003 to 2006, 44 percent of the higher-risk ARMs that came to dominate the subprime market in recent years were extended to consumers to purchase a home.[40] Delinquencies on subprime ARMs used for home purchase have risen sharply just as they have for refinancings. Moreover, comments and testimony at the Board's hearings indicate that the problems with abusive lending practices are not confined to refinancings and home equity loans.

Furthermore, consumers who are seeking home purchase loans can face unique constraints on their ability to make decisions. First-time homebuyers are likely unfamiliar with the mortgage market. Homebuyers generally are primarily focused on acquiring a new home, arranging to move into it, and making other life plans related to the move, such as placing their children in new schools. These matters can occupy much of the time and attention consumers might otherwise devote to shopping for a loan and deciding what loan to accept. Moreover, even if the consumer comes to understand later in the application process that an offered loan may not be appropriate, the consumer may not be able to reject the loan without risk of abrogating the sales agreement and losing a substantial deposit, as well as disrupting moving plans.

Coverage of Subordinate-Lien Loans

The Board is proposing to apply the proposed new protections—with the exception of the requirement to establish escrows—to subordinate-lien loans. (The reasons for this exception are discussed below under part VII.D.) The Board seeks comment on whether other exceptions would be appropriate. For example, should the Board limit coverage of all or some of the proposed restrictions to certain kinds of subordinate-lien loans such as ''piggy backs'' to first-lien loans, or subordinate-lien loans that are larger than the first-lien loan?

Limitation to Loans Secured by Principal Dwelling; Exclusion of Loans for Investment

The Board is proposing to limit the protections in proposed § 226.35 to loans secured by the consumer's principal dwelling. The Board's primary concern is to ensure that consumers not lose the homes they principally occupy

[40] Figure calculated from First American LoanPerformance data.

because of unfair, abusive, or deceptive lending practices. The inevitable costs of new regulation, including potential unintended consequences, can most clearly be justified when people's principal homes are at stake.

Limiting the proposed protections to loans secured by the principal dwelling would have the effect of excluding many, but not all, loans to purchase second homes. A loan to a consumer to purchase a second home, for example, would not be covered by these protections if the loan was secured only by the second home or by another dwelling (such as an investment property) other than the consumer's principal dwelling. Such a loan would, however, be covered if it was instead secured by the consumer's principal dwelling.

Limiting the proposed protections to loans secured by the principal dwelling—and to loans having primarily a consumer purpose—would also have the effect of excluding loans primarily for a real estate investment purpose. This exclusion is consistent with TILA's focus on consumer concerns and its exclusion in Section 104 of credit primarily for business, commercial, or agricultural purposes. *See* 15 U.S.C. 1603(1). Real estate investors are expected to be more sophisticated than ordinary consumers about the real estate financing process and to have more experience with it, especially if they invest in several properties. Accordingly, the need to protect investors is not clear, and in any event is likely not sufficient to justify the potential unintended consequences of imposing restrictions, with civil liability if they are violated, on the financing of real estate investment transactions.

The Board shares concerns that individuals who invest in residential real estate and do not pay their mortgage obligations put tenants at risk of eviction in the event of foreclosure. Regulating the rights of landlords and tenants, however, is traditionally a matter for state and local law. The Board believes that state and local law could better address this particular tenant protection concern than a Board regulation.

Exclusion of HELOCs

The Board proposes to exclude HELOCs from the proposed protections. These transactions do not appear to present as clear a need for new regulations as closed-end transactions. Most originators of HELOCs hold them in portfolio rather than sell them, which aligns these originators' interests in loan performance more closely with their borrowers' interests. In addition, TILA and Regulation Z provide borrowers special protections for HELOCs such as restrictions on changing plan terms. And, unlike originations of higher-priced closed-end mortgage loans, HELOC originations are concentrated in the banking and thrift industries, where the federal banking agencies can use supervisory authorities to protect borrowers. For example, when inadequate underwriting of HELOCs unduly increased risks to originators and consumers several years ago, the agencies responded with guidance.[41] For these reasons, the Board is not proposing to cover HELOCs.

The Board recognizes, however, that HELOCs may represent a risk of circumvention. Creditors may seek to evade limitations on closed-end transactions by structuring such transactions as open-end transactions. In proposed § 226.35(b)(5), discussed below in part VII.F., the Board proposes to prohibit structuring a closed-end loan as an open-end transaction for the purpose of evading the new rules in § 226.35. To the extent it may instead be appropriate to apply those rules directly to HELOCs, the Board seeks comment on how an APR threshold for HELOCs could be set to achieve the objectives, discussed further in subpart E., of covering the subprime market and generally excluding the prime market.

Exclusion of Reverse Mortgages and Construction-Only Loans

The Board proposes to exclude reverse mortgages and construction-only loans from the new protections in § 226.35(b). A reverse mortgage is defined in current § 226.33(a), and the proposal would retain this definition. The Board heard from panelists about reverse mortgages at its 2006 HOEPA hearings and has not identified significant abuses in the reverse mortgage market. Moreover, reverse mortgages are unique transactions that present unique risks that are currently addressed by Regulation Z § 226.33. At an appropriate time, the Board will review § 226.33 and consider whether new or different protections are needed for reverse mortgages.

The Board would also exclude from § 226.35's protections a construction-only loan, defined as a loan solely for the purpose of financing the initial construction of a dwelling, consistent with the definition of a ''residential mortgage transaction'' in § 226.2(a)(24). A construction-only loan would not include the permanent financing that replaces a construction loan. Construction-only loans do not appear to present the same risk of consumer abuse as other loans the proposal would cover. The permanent financing, or a new home-secured loan following construction, would be covered by proposed § 226.35. Applying § 226.35 to construction-only loans, which generally have higher interest rates than the permanent financing, could hinder some borrowers' access to construction financing without meaningfully enhancing consumer protection.

Exclusion of Bridge Loans

Proposed § 226.35(a)(5) would exempt from § 226.35 temporary or ''bridge loans'' with a term of no more than twelve months. The regulation would give as an example a loan that a consumer takes to ''bridge'' between the purchase of a new dwelling and the sale of the consumer's existing dwelling. HOEPA now covers certain bridge loans with rates or fees high enough to make them HOEPA loans. TILA Section 129(l)(1) provides the Board authority to exempt classes of mortgage transactions from HOEPA if the Board finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protection. 15 U.S.C. 1639(l)(2). The Board believes a narrow exemption from HOEPA for bridge loans would be in borrowers' interest and support homeownership. The Board seeks comment on the proposed exemption.

E. Proposed APR Trigger for § 226.35

Overview

The Board proposes to use an APR trigger to define the range of transactions that would be covered by the protections of proposed § 226.35. The Board seeks to set the trigger at a level that would capture the subprime market but generally exclude the prime market. There is, however, inherent uncertainty as to what level would achieve these objectives. The Board believes that it may be appropriate, in the face of this uncertainty, to err on the side of covering somewhat more than the subprime market. Based on this approach, the Board proposes a threshold of three percentage points above the comparable Treasury security for first-lien loans, or five percentage points for subordinate-lien loans. Based on available data, it appears that this threshold would capture at least the

[41] Interagency Credit Risk Guidance for Home Equity Lending, May 16, 2005.

Available at *http://www.federalreserve.gov/boarddocs/srletters/2005/sr0511a1.pdf.*

Addendum to Credit Risk Guidance for Home Equity Lending, Sept. 29, 2006. Available at *http://www.federalreserve.gov/BoardDocs/SRLetters/2006/SR0615a3.pdf.*

higher-priced end of the alt-A market. The Board seeks comment, and solicits data, on the extent to which the threshold would cover the alt-A market, and on the benefits and costs, including any potential unintended consequences for consumers, of applying any or all of the protections in § 226.35 to the alt-A market to the extent it would be covered. The Board also seeks comment on whether a different threshold, such as four percentage points for first-lien loans (and six percentage points for subordinate-lien loans), would better satisfy the objectives of covering the subprime market, excluding the prime market, and avoiding unintended consequences for consumers in the alt-A market.

Reasons To Use APR

The APR corresponds closely to credit risk, that is, the risk of default as well as the closely related risks of serious delinquency and foreclosure. Loans with higher APRs generally have higher credit risks, whatever the source of the risk might be—weaker borrower credit histories, higher borrower debt-to-income ratios, higher loan-to-value ratios, less complete income or asset documentation, less traditional loan terms or payment schedules, or combinations of these or other risk factors. Since disclosing an APR has long been required by TILA, the figure is also very familiar and readily available to creditors and consumers. Therefore, the Board believes it appropriate to use a loan's APR to identify loans having a high enough credit risk to warrant the protections of proposed § 226.35.

The APR for two loans with identical risk characteristics can be different at different times solely because of market changes in mortgage rates. The Board proposes to control for such market changes by comparing a loan's APR to the yield on the comparable Treasury security. This would be similar, but not identical, to the approach HOEPA uses currently to identify HOEPA-covered loans, *see* TILA Section 103(aa), 15 U.S.C. 1602(aa), and § 226.32(a), and Regulation C uses to identify higher-priced loans reportable under HMDA, *see* 12 CFR 203.4(a)(12). The Board is aware of concerns that the method that these regulations use to match mortgage loans to Treasuries leads to some inaccuracy in coverage and makes coverage vary with changes in the yield curve (the relationship between short-term and long-term interest rates). As discussed in more detail below, the Board is proposing to address these concerns in the context of § 226.35.

Coverage Objectives

The Board set forth above a general principle that new regulations should be applied as broadly as needed to protect consumers from actual or potential injury, but not so broadly that the costs, including the always-present risk of unintended consequences, would clearly outweigh the benefits. Consistent with this principle, the Board believes that the APR threshold should satisfy two objectives. It should ensure that subprime loans are covered. Second, it should also generally exclude prime loans.

The subprime market should be covered because it is, by definition, the market with the highest credit risk. There are of course variations in risk within the subprime market. For example, delinquencies on fixed-rate subprime mortgages have been lower in recent years than on adjustable-rate subprime mortgages. It may not be practical or effective, however, to target certain loans in the subprime market for coverage while excluding others. Such a rule would be more complex and possibly require frequent updating as products evolved. Moreover, market imperfections discussed in part II.C.—the subprime market's lack of transparency and potentially inadequate creditor incentives to make only loans that consumers can repay—affect the subprime market as a whole.

There are two principal reasons why the Board seeks to exclude the prime market from § 226.35. First, there is limited evidence that the problems addressed in § 226.35, such as lending without regard to repayment ability, have been significant in the prime market or gone unaddressed when they have on occasion arisen. By nature, loans in the prime market have a lower credit risk, as seen in the relatively low default and delinquency rates for prime loans compared to sharply increasing rates for subprime loans since 2005. Moreover, the prime market is more transparent and competitive, characteristics that make it less likely a creditor can sustain an unfair, abusive, or deceptive practice. In addition, borrowers in the prime market are less likely to be under the degree of financial stress that tends to weaken the ability of many borrowers in the subprime market to protect themselves against unfair, abusive, or deceptive practices. To be sure, there have been concerns about the prime market, and this proposal would address some of them. For example, the proposal addresses concerns about coercion of appraisers, untransparent creditor payments to mortgage brokers, and abusive servicing practices.

Second, any undue risks to consumers in the prime market from particular loan terms or lending practices can be adequately addressed through means other than new regulations under HOEPA. Supervisory guidance from the federal agencies influences a large majority of the prime market which, unlike the subprime market, has been dominated by federally supervised institutions.[42] Such guidance affords regulators and institutions alike more flexibility than a regulation, with potentially fewer unintended consequences. In addition, the Government Sponsored Enterprises continue to play a major role in the prime market, and they are accountable to regulators and policy makers for the standards they set for loans they will purchase.[43]

For these reasons, the Board does not believe that substantive restrictions on loan terms or lending practices are warranted in the prime market at this time. The need for such restrictions is not clear and their potential unintended consequences could be significant.

Inherent Uncertainty of Meeting Coverage Objectives

There are three major reasons why it is inherently uncertain which APR threshold would achieve the twin objectives of covering the subprime market and generally excluding the prime market. First, there is no single, precise, and uniform definition of the prime or subprime market, or of a prime or subprime loan. Moreover, the markets are separated by a somewhat loosely defined segment known as the alt-A market, the precise boundaries of which are not clear.

Second, available data sets enable only estimation, not precise calculation, of the empirical relationship between APR and credit risk. A proprietary dataset such as First American LoanPerformance may contain detailed information on loan characteristics, including the contract rate, but lack the APR or sufficient data to derive the APR. Other data must be consulted to estimate APRs based on contract rates. HMDA data contain the APR for higher-priced loans (as adjusted by comparable Treasury securities), but they have little information about credit risk.

[42] According to HMDA data from 2005 and 2006, more than three-quarters of prime, conventional first-lien mortgage loans on owner-occupied properties were made by depository institutions or their affiliates. For this purpose, a loan for which price information was not reported is treated as a prime loan.

[43] According to HMDA data from 2005 and 2006, nearly 30 percent of prime, conventional first-lien mortgage loans on owner-occupied properties were purchased by Fannie Mae or Freddie Mac.

Third, data sets can of course show only the existing or past distribution of loans across market segments, which may change in ways that are difficult to predict. In particular, the distribution could change in response to the Board's imposition of the restrictions in § 226.35, but the likely direction of the change is not clear. A loan's APR is typically not known to a certainty until after the underwriting has been completed, and not until closing if the consumer has not locked the interest rate. Creditors might build in a ''cushion'' against this uncertainty by voluntarily setting their internal thresholds lower than the threshold in the regulation.

Creditors would have a competing incentive to avoid the restrictions, however, by restructuring the prices of potential loans that would have APRs just above the threshold to cause the loans' APRs to come under the threshold. Different combinations of interest rate and points that are economically identical for an originator produce different APRs. If proposed § 226.35 were adopted, an originator would have an incentive to achieve a rate-point combination that would bring a loan's APR below the threshold (if the borrower had the resources or equity to pay the points). Moreover, some fees, such as late fees and prepayment penalties, are not included in the APR. Creditors could increase the number or amounts of such fees to maintain a loan's effective price while lowering its APR below the threshold. It is not clear whether the net effect of these competing forces of over-compliance and circumvention would be to capture more, or fewer, loans.

For all of the above reasons, there is inherent uncertainty as to what APR threshold would achieve the objectives of covering the subprime market and generally excluding the prime market.

The Alt-A Market

In the face of this uncertainty, deciding on an APR threshold calls for judgment. The Board believes it may be appropriate to err on the side of covering somewhat more than the subprime market. In effect, this could mean covering part of the alt-A market, a possibility that merits special consideration.

The alt-A market is generally understood to be for borrowers who typically have higher credit scores than subprime borrowers but still pose more risk than prime borrowers because they make small down payments or do not document their incomes, or for other reasons. The definition of this market is not precise, however. Moreover, the size and character of this market segment have changed markedly in a relatively short period. According to one source, it was 2 percent of residential mortgage originations in 2003 and 13 percent in 2006.[44] At least part of this growth was due to increasing flexibility of underwriting standards. For example, in 2006, 80 percent of loans originated for alt-A securitized pools were underwritten without full documentation of income, compared to about 60 percent from 2000 to 2004.[45] At the same time, nontraditional mortgages allowing borrowers to defer principal, or both principal and interest, also expanded, reaching 78 percent of alt-A originations in 2006.[46]

The Board recognizes that risks to consumers in the alt-A market are lower than risks in the subprime market. The Board believes, however, that it may be appropriate to cover at least part of the alt-A market with the protections of § 226.35. Because of the inherent uncertainties in setting an APR threshold discussed above, covering part of the alt-A market may be necessary to ensure consistent coverage of the subprime market. Moreover, to the extent § 226.35 were to cover the higher-priced end of the alt-A market, where several risks may be layered, the regulation may benefit consumers more than it would cost them. For example, applying an income verification requirement to the riskier part of the alt-A market could ameliorate injuries to consumers from lending based on inflated incomes without necessarily depriving consumers of access to credit, if they are able to document their incomes as § 226.35(b)(2) would require. Prohibiting lending without regard to repayment ability in this market slice could reduce the risk to consumers from ''payment shock'' on nontraditional loans. At the same time, the Board recognizes the potential for unintended consequences if § 226.35 restrictions were to cover part of the alt-A market and seeks to minimize those consequences.

The Proposed Thresholds of 3 and 5 Percentage Points

Based on the foregoing considerations, the Board is proposing to set the APR threshold for a loan at three percentage points above the comparable Treasury security, or five percentage points in the case of a subordinate-lien loan. Available data indicate that this threshold would capture the subprime market but generally exclude the prime market. In each of the last two years, the percentage of the first-lien mortgage market Regulation C has captured as higher-priced using a threshold of three percentage points has been greater than the percentage of the total market originations that one industry source has estimated to be subprime (25 percent vs. 20 percent in 2005; 28 percent vs. 20 percent in 2006).[47] Regulation C is not thought, however, to have reached the prime market. Rather, in both years it reached into the alt-A market, which the same source estimated to be 12 percent in 2005 and 13 percent in 2006. In 2004, Regulation C captured a significantly smaller part of the market than an industry estimate of the subprime market (11 percent vs. 19 percent), but that year's HMDA data were somewhat anomalous.[48]

The Board does not have data indicating how closely the proposed threshold of five percentage points for subordinate-lien loans would correspond to the subprime home equity market. It is the Board's understanding, however, that this threshold, which has prevailed in Regulation C since 2004, has been at least roughly accurate.

Requests for Comment

The Board seeks comment, and supporting data, on whether different thresholds would better satisfy the objectives of covering the subprime market and generally excluding the prime market. The Board seeks comment and data both as to first-lien loans and as to subordinate-lien loans; and both as to home purchase loans and as to refinancings. The Board also seeks comment and supporting data on the extent to which the proposed threshold would cover the alt-A market and, as discussed above, on the costs and benefits of such coverage. Moreover, the Board seeks comment on whether a different threshold than that proposed, such as four percentage points for first-lien loans (and six percentage points for subordinate-lien loans), would better satisfy the objectives of covering the subprime market, excluding the prime market, and avoiding unintended

[44] *IMF 2007 Mortgage Market*, at 4.

[45] Figures calculated from First American LoanPerformance data.

[46] David Liu & Shumin Li, *Alt A Credit—The Other Shoe Drops?*, The MarketPulse The MarketPulse (First American LoanPerformance, Inc., San Francisco, Cal.), Dec. 2006.

[47] For industry estimates see *IMF 2007 Mortgage Market*, at 4.

[48] The principal cause of the reporting deficit was the unusually steep yield curve that characterized 2004. For purposes of proposed § 226.35(a), the Board is proposing to adjust the method that Regulation C uses to calculate the higher-priced loan threshold to reduce, though not eliminate, the effects of yield curve changes on § 226.35's coverage. This proposal is discussed below.

consequences for consumers in the alt-A market.

The Board also seeks comment on the extent to which lenders may set an internal threshold lower than that set forth in the regulation to ensure compliance, and the consequences that could have for consumers. Conversely, the Board seeks comment on the extent of the risk creditors would circumvent the proposed restrictions by charging more fees and lower interest rates to reduce their loans' APRs, and the consequences that could have for consumers. Is this risk significant enough to warrant addressing separately. For example, should the Board adopt a separate fee trigger? What fees would such a trigger include and at what level would it be set? Alternatively, would a general prohibition on manipulating the APR to circumvent the protections of § 226.35 be practicable?

F. Mechanics of the Proposed APR Trigger

Under Regulation C, price information on a closed-end, first-lien loan is reported if the loan's APR exceeds by three or more percentage points (five if the loan is secured by a subordinate lien) the yield on Treasury securities having a comparable period of maturity. A lender uses the yield on Treasury securities as of the 15th day of the preceding month if the rate is set between the 1st and the 14th day of the month, and as of the 15th of the current month if the rate is set on or after the 15th day. Although the Board proposes to use the same numerical thresholds, the Board proposes to use somewhat different rules for matching mortgage loans to Treasury securities.

Matching Loans to Treasury Securities

For purposes of this rulemaking, the Board proposes to use a different approach than Regulation C uses to match loans to Treasury securities, with the intent of reducing effects solely from changes in the interest rate environment. Following the model of HOEPA (TILA Section 103(aa), 15 U.S.C. 1603(aa)), Regulation C compares the APR on a loan to the yield on Treasury securities having a period of maturity comparable to the maturity of the loan. 12 CFR 203.4(a)(12). For example, the APR on a fixed-rate, 30-year loan—the most common loan term in the market—is compared to the yield on a 30-year Treasury security. In actuality, mortgage loans are usually paid off long before they mature, typically in five to ten years. Rates on fixed-rate 30-year mortgage loans, therefore, more closely track yields on Treasury securities having maturities in the range of five to ten years rather than yields on 30-year Treasury securities. Rates on adjustable-rate mortgages more closely track yields on Treasury securities that mature in one to five years, depending in part on the duration of any initial fixed-rate period. As a result, changes in the relationship of short-term rates to long-term rates, known as the yield curve, have affected reporting of higher-priced mortgage loans.

For purposes of the rules proposed here, the Board's goal is to reduce this ''yield curve effect.'' Ideally, each loan would be matched to a Treasury security that corresponds to that loan's expected maturity, which would be determined based on empirical data about prepayment speeds for loans with the same features. It is not practicable, however, to match loans to Treasuries on the basis of the full range of features that may influence prepayment speeds. For the sake of simplicity and predictability, the Board proposes to prescribe rules based on three features: whether the loan is adjustable-rate or fixed-rate; the term of the loan; and the length of any initial fixed-rate period, if the loan is adjustable-rate.

Proposed § 226.35(a) that would match closed-end loans to Treasury securities as follows. First, variable rate transactions with an initial fixed-rate period of more than one year would be matched to Treasuries having a maturity closest to the length of the fixed-rate period (unless the fixed-rate period exceeds seven years, in which case the creditor would use the rules applied to non-variable rate loans). For example, a 30-year ARM having an initial fixed-rate period of five years would be matched to a 5-year Treasury security. Second, variable-rate transactions with an initial fixed-rate period of one year or less would be matched to Treasury security having a maturity of one year. Third, fixed-rate loans would be matched on the basis of loan term in the following way: A fixed-rate loan with a term of 20 years or more would be matched to a 10-year Treasury security; a fixed-rate loan with a term of more than 7 years but less than twenty years would be matched to a 7-year Treasury security; and a fixed-rate loan with a term of seven years or less would be matched to the Treasury security with a maturity closest to the term.

Timing of the Match

The proposal also would differ from Regulation C as to timing. The Treasury security yield that would be used is the yield as of the 15th of the month preceding the month in which the application is received, rather than the 15th of the month before the rate is locked. This would introduce more certainty, earlier in the application process, to the determination as to whether a potential transaction would be a higher-priced mortgage loan when consummated. The actual APR, however, would not be known to a certainty early in the application process, leaving some uncertainty as to whether a potential loan will be a higher-priced loan if it is actually originated. The APR disclosed within three days of application could change before closing for legitimate reasons such as changes in the interest rate or in the borrower's decision as to how many points to pay, if any. It is not expected, however, that an APR would change substantially in many cases for legitimate reasons.

Using two different trigger dates in Regulation C and Regulation Z § 226.35(a)—the rate lock date in the first and the application date in the second—could increase regulatory burden. Using the rate lock date in § 226.35(a), however, could increase uncertainty, relative to using the application date, as to whether a loan would be higher-priced when consummated. The Board believes the potentially somewhat higher regulatory burden from inconsistency may be justified by the increase in certainty.

Requests for Comment

The Board seeks data with which to evaluate the proposed approach to matching mortgage loans to Treasury securities and the proposal to select the appropriate Treasury security based on the application date. The Board also solicits suggestions for alternative approaches that would better meet the objectives of relative simplicity and reasonably accurate coverage.

VII. Proposed Rules for Higher-Priced Mortgage Loans—§ 226.35

A. Overview

This part discusses the new consumer protections the Board proposes to apply to ''higher-priced mortgage loans.'' A creditor would be prohibited from engaging in a pattern or practice of making higher-priced mortgage loans based on the collateral without regard to repayment ability. A creditor would also be prohibited from making an individual higher-priced mortgage loan without: Verifying the income and assets the creditor relied upon to make the loan; and establishing an escrow account for taxes and insurance. In addition, a higher-priced mortgage loan

could not have a prepayment penalty except under certain conditions.

The Board believes that the practices that would be prohibited, when conducted in connection with higher-priced mortgage loans, are unfair, deceptive, associated with abusive lending practices, and otherwise not in the interest of the borrower. *See* TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), and the discussion of this statute in part V above. Making higher-priced mortgage loans without adequately considering repayment ability, verifying income or assets, or establishing an escrow account for taxes and insurance significantly increases the risk that consumers will not be able to repay their loans. When consumers cannot repay their loans and must choose between losing their homes and refinancing in an effort to stay in their homes, they are more vulnerable to such abuses as loan flipping and equity stripping. Prepayment penalties in certain circumstances can exacerbate these injuries by making it more costly to exit unaffordable loans.

The Board has considered that some of the practices that would be prohibited may benefit some consumers in some circumstances. As discussed more fully below with respect to each prohibited practice, however, the Board believes that in connection with higher-priced mortgage loans these practices are likely to cause more injury to consumers than any benefit the practices may provide them. The Board has also considered that the proposed rules may reduce the access of some consumers in some circumstances to legitimate and beneficial credit arrangements, either directly as a result of a prohibition or indirectly because creditors may incur, and pass on, increased compliance and litigation costs. The Board believes the benefits of the proposal outweigh these costs.

The Board has also considered other, potentially less burdensome, approaches such as requiring more, or better, disclosures. For reasons discussed in part II.C., the Board believes that disclosures alone may not provide consumers in the subprime market adequate protection from unfair, deceptive, and abusive lending practices. The discussion below sets forth additional reasons why disclosures and other possible alternatives to the proposed prohibitions may not give adequate protection.

In addition to proposing new protections for consumers with higher-priced mortgage loans, the Board is also proposing to prohibit a creditor from structuring a closed-end mortgage loan as an open-end line of credit for the purpose of evading the restrictions on higher-priced mortgage loans, which do not apply to open-end lines of credit. This proposal is based on the authority of the Board under TILA Section 129(l)(2) to prohibit practices that would evade Board regulations adopted under authority of that statute. 15 U.S.C. 1639(l)(2).

B. Disregard of Consumers' Ability to Repay—§§ 226.34(a)(4) and 226.35(b)(1)

TILA Section 129(h), 15 U.S.C. 1639(h), and Regulation Z § 226.34(a)(4) currently prohibit a pattern or practice of extending HOEPA loans based on consumers' collateral without regard to their repayment ability. HOEPA loans are, however, a very small portion of the subprime market. The Board is proposing to extend the prohibition against a pattern or practice of lending based on consumers' collateral without regard to their repayment ability to higher-priced mortgage loans as defined in § 226.35(a). The prohibition in § 226.34(a)(4) would be revised somewhat, and this revised prohibition would be incorporated as proposed new § 226.35(b)(1).

Public Comment on Determining Ability To Repay

In the Board's June 14, 2007 hearing notice, the Board solicited comment on the following alternatives to ensure borrowers' repayment ability:

- Should lenders be required to underwrite all loans based on the fully-indexed rate and fully amortizing payments?
- Should there be a rebuttable presumption that a loan is unaffordable if the borrower's debt-to-income (DTI) ratio exceeds 50 percent?
- Are there specific consumer disclosures that would help address concerns about unaffordable loans?

Few commenters offered specific disclosure suggestions but many commenters and hearing witnesses addressed the first two questions. Most consumer and community groups who commented support a requirement to underwrite ARMs using the fully-indexed, fully-amortizing rate. Several recommended, however, that the Board require underwriting to the maximum rate possible or, at least, to a rate higher than the fully-indexed rate. These commenters are concerned that using the fully-indexed rate would not adequately assure repayment ability because indexes can increase.

All of the financial institutions and financial services trade groups who responded to the question agree that underwriting a loan based on its fully-indexed interest rate and fully-amortizing payment is generally prudent. With few exceptions, however, most of these commenters oppose codifying such a standard in a regulation, arguing that a regulation would be too rigid, constrain lenders from relying on their own experience and judgment, and make ARMs unavailable to many subprime borrowers. Several financial institutions and trade groups asked that any fully-indexed rate requirement the Board adopts be limited to ARMs with introductory fixed-rate periods of less than five years. They maintained that most borrowers having ARMs with longer fixed-rate periods refinance before the rate adjusts.

Consumer and community groups argue that a requirement to underwrite to the fully-indexed rate would not assure that loans would be affordable unless the Board also specified a maximum debt-to-income (DTI) ratio. Most groups stated that a maximum 50 percent DTI ratio would be an appropriate threshold to identify presumptively unaffordable loans. On the other hand, the vast majority of the financial institution and industry trade group commenters oppose adoption of a maximum DTI ratio. Some stated the DTI ratio is not one of the most important predictors of loan performance. Others noted the difficulties of clearly defining ''debt'' and ''income'' for purposes of such a rule, or of clearly defining mitigating factors such as high credit scores. Some identified categories of borrowers for whom high DTIs are not inappropriate, such as high-income borrowers; borrowers with substantial assets; and borrowers refinancing or consolidating loans with even higher payment burdens.

Discussion

Recent evidence of disregard for repayment ability. Subprime loans are expected to default at higher rates than prime loans because they generally are made to higher-risk borrowers. But the high frequency of so-called 2–28 and 3–27 ARMs in subprime originations in recent years—and the recent rapid and significant increase in serious delinquencies and foreclosures among such loans originated from 2005 to early 2007, including within several months of closing—have raised serious questions as to whether originators have paid adequate attention to repayment ability. Approximately three-quarters of securitized originations in subprime pools from 2004 to 2006 were of 2–28 or 3–27 ARMs, or ARMs with interest rates discounted for two or three years and fully-indexed afterwards. In a

typical case of a 2–28 discounted ARM, a $200,000 loan with a discounted rate of 7 percent for two years (compared to a fully-indexed rate of 11.5 percent) and a 10 percent maximum rate in the third year would start at a payment of $1,531 and jump to a payment of $1,939 in the third year, even if the index value did not increase. The rate would reach the fully-indexed rate in the fourth year (if the index value still did not change), and the payment would increase to $2,152.[49]

In recent years many subprime lenders did not consider adequately whether borrowers would be able to afford the higher payment, and appeared instead to assume that borrowers would be able to refinance notwithstanding their very limited equity. Originators extended some 2–28 ARMs from 2005 to early 2007 without having reason to believe the borrower would be able to afford the payment after reset. Originators may have assumed that these borrowers would refinance before reset, an assumption that proved unrealistic, at least under newly tightened lending standards, when house prices fell and the borrowers could not accumulate enough equity to refinance. In fact, some 2–28 ARMs originated in 2005 and 2006 appear to have been made to borrowers who could not afford even the initial payment. Over 10 percent of the 2–28 ARMs originated in 2005 appear to have become seriously delinquent before their first reset.[50] While some borrowers may have been able to make their payments—they stopped making payment because the values of their houses declined and they lost what little equity they had—others may not have been able to afford even their initial payments.

Potential reasons for unaffordable loans. There are several reasons why borrowers, especially in the subprime market, would accept loans they would not be able to repay. In some cases, less scrupulous originators may mislead borrowers into entering into unaffordable loans by understating the payment before closing and disclosing the true payment only at closing. At the closing table, many borrowers may not notice the disclosure of the payment or have time to consider it; or they may consider it but feel constrained to close the loan. This constraint may arise from a variety of circumstances. For example, the borrower may have signed agreements to purchase a new house and to sell the current house. Or the borrower may need to escape an overly burdensome payment on a current loan, or urgently need the cash that the loan will provide for a household emergency.

In the subprime market in particular, consumers may accept loans knowing they may have difficulty affording the payments because they do not have reason to believe a more affordable loan would be available to them. Possible sources of this behavior, including the limited transparency of prices, products, and broker incentives in the subprime market, are discussed in part II.C. Borrowers who do not expect any benefit from shopping further, which can be costly, make a reasoned decision not to shop and to accept the terms they believe are the best they can get.

Furthermore, borrowers' own assessment of their repayment ability may be influenced by their belief that a lender would not provide credit to a consumer who did not have the capacity to repay. Borrowers could reasonably infer from a lender's approval of their applications that the lender had appropriately determined that they would be able to repay their loans. Borrowers operating under this impression may not independently assess their repayment ability to the extent necessary to protect themselves from taking on obligations they cannot repay. Borrowers are likely unaware of market imperfections that may reduce lenders' incentives to fully assess repayment ability. *See* part II.C. In addition, lenders and brokers may sometimes encourage borrowers to be excessively optimistic about their ability to refinance should they be unable to sustain repayment. For example, they sometimes offer reassurances that interest rates will remain low and house prices will increase; borrowers may be swayed by such reassurances because they believe the sources are experts.

Injuries from unaffordable loans. When borrowers cannot afford to meet their payment obligations, they and their communities suffer significant injury. Such borrowers are forced to use up home equity or other assets to cover the costs of refinancing. If refinancing is not an option, then borrowers must make sacrifices to keep their homes. If they cannot keep their homes, then they must sell before they had planned or endure foreclosure and eviction; in either case they may owe the lender more than the house is worth. If a neighborhood has a concentration of unaffordable loans, then the entire neighborhood may endure a decline in homeowner equity. Moreover, if disregard for repayment ability contributes to a rise in delinquencies and foreclosures, as appears to have happened recently, then the credit tightening that may follow can injure all consumers who are potentially in the market for a mortgage loan.

Potential benefits. There does not appear to be any benefit to consumers from loans that are clearly unaffordable at origination or immediately thereafter. The Board recognizes, however, that some consumers may in some circumstances benefit from loans whose payments would increase significantly after an initial period of reduced payments. For example, some consumers may expect to be relocated by their employers and therefore intend to sell their homes before their payment would increase significantly. Moreover, a planned increase in the payment that would not be affordable at consumers' current incomes (as of consummation) may be affordable at the incomes consumers can document that they reasonably expect to earn when the payment increases. The proposal described below is intended to provide sufficient flexibility to creditors to ensure that credit would be available under such circumstances.

Consumers may also benefit from loans with payments that could increase after an initial period of reduced payments if they have a realistic chance of refinancing, before the payment burden increases substantially, into lower-rate loans that were more affordable on a longer-term basis. This benefit is, however, quite uncertain, and it is accompanied by substantial risk. Consumers would have to both improve their credit scores sufficiently and accumulate enough equity to qualify for lower-rate loans. Concerns about the affordability after reset of 2–28 and 3–27 ARMs originated from 2005 to early 2007 illustrate the hazards of counting on both developments occurring before payments become burdensome. Marketed as ''affordability products,'' these loans often were made with high loan-to-value ratios on the assumption that house prices would appreciate. In areas where house price appreciation slowed or prices declined outright, the assumption proved unreliable. Moreover, the Board is not aware of evidence on the proportion of such borrowers who were actually able to raise their credit scores enough to

[49] This example is taken from the federal agencies' proposed subprime illustrations. Proposed Illustrations of Consumer Information for Subprime Mortgage Lending, 72 FR 45495, 45497 n.2 & 45499, Aug. 14, 2007. The example assumes an initial index of 5.5 percent and a margin of 6 percent; assumes annual payment adjustments after the initial discount period; a 3 percent cap on the interest rate increase at the end of year 2; and a 2 percent annual payment adjustment cap on interest rate increases thereafter, with a lifetime payment adjustment cap of 6 percent (or a maximum rate of 13 percent).

[50] Figure calculated from First American LoanPerformance data.

qualify for lower-rate loans had they accumulated sufficient equity. In short, evidence from recent events is consistent with a conclusion that a widespread practice of making subprime loans with built-in payment shock after a relatively short period on the basis of assuming consumers will accumulate sufficient equity and improve their credit scores enough to refinance before the shock sets in can cause consumers more injury than benefit.

The Proposed Prohibition

HOEPA and § 226.34 prohibit a lender from engaging in a pattern or practice of extending credit subject to § 226.32 (HOEPA loans) to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. Under the proposal, the prohibition in § 226.34(a)(4) would be revised to clarify and strengthen it. The revised § 226.34(a)(4) would be incorporated into § 226.35(b) as one of the restrictions that apply to higher-priced mortgage loans. Higher-priced mortgage loans would be defined in § 226.35(a) as explained above.

As proposed, Regulation Z would prohibit a lender from engaging in a pattern or practice of making higher-priced mortgage loans based on the value of consumers' collateral without regard to consumers' repayment ability as of consummation, including consumers' current and reasonably expected income, current and reasonably expected obligations, employment, and assets other than the collateral. Each of the elements of this proposed standard is discussed below.

Collateral-based lending. The proposal would prohibit a pattern or practice of collateral-based lending with higher-priced mortgage loans. The Board recognizes that this proposal may reduce the availability of credit for consumers whose current and expected income and non-collateral assets are not sufficient to demonstrate repayment ability. For example, unemployed borrowers with limited assets apart from their homes may have more difficulty obtaining mortgage credit under this proposal if their combined risk factors are high enough that the APR of their potential loan would exceed the proposed threshold in § 226.35(a).

''Pattern or practice.'' The Board is not proposing to prohibit making an individual loan without regard to repayment ability, either for HOEPA loans or for higher-priced mortgage loans. Instead, the Board is proposing to retain the pattern or practice element in the prohibition, and to include that element in the proposed new prohibition for higher-priced mortgage loans. The ''pattern or practice'' element of the prohibition is intended to balance potential costs and benefits of the rule. Creating civil liability for an originator that fails to assess repayment ability on any individual loan could inadvertently cause an unwarranted reduction in the availability of mortgage credit to consumers. The ''pattern or practice'' element is intended to reduce that risk while helping prevent originators from making unaffordable loans on a scale that could cause consumers substantial injury.

Whether a creditor had engaged in the prohibited pattern or practice would depend on the totality of the circumstances in the particular case, as explained in an existing comment to § 226.34(a)(4). The comment further indicates that while a pattern or practice is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. It also notes that a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of the prohibition.

The Board is not proposing to adopt a quantitative standard for determining the existence of a pattern or practice. Nor does it appear feasible for the Board to give examples, as the inquiry depends on the totality of the circumstances. Comment is sought, however, on whether further guidance would be appropriate and specific suggestions are solicited.

''Current and expected income.'' The statute and regulation both prohibit a creditor from disregarding a consumer's repayment ability, including current and expected income. The Board proposes to retain the references to expected and current income, and to clarify that expectations of income must be reasonable. The Board believes consumers may benefit if a creditor is permitted to take into account reasonably expected increases in income. For example, a consumer seeking a professional degree or certificate may, depending on the job market and other relevant circumstances, reasonably anticipate an increase in income after obtaining the degree or certificate. Under the proposal, a creditor could consider such an increase. For consumers who do not have a current income and cannot demonstrate a reasonable expectation of income, creditors may consider assets other than the collateral.

Other proposed clarifications. Several other revisions are proposed for clarity. The phrase ''as of consummation'' would be added to make clear that the prohibition is based on the facts and circumstances that existed as of consummation. Under proposed comment 34(a)(4)–2, events after consummation, such as an unusually high default rate, may be relevant to determining whether a creditor has violated § 226.34(a)(4), but events after consummation do not, by themselves, establish a violation. The comment would provide the following example: a violation is not established if borrowers default after consummation because of serious illness or job loss.

In addition, to clarify the basis for determining repayment ability the regulation and existing comments would be revised, and new comments would be added. First, comment 34(a)(4)–1 (renumbered as 34(a)(4)–3) would be revised to clarify the regulation's reference to employment as a factor in determining repayment ability. The comment would indicate that in some circumstances it may be appropriate or necessary to take into account expected changes in employment. For example, depending on all of the facts and circumstances, it may be reasonable to assume that students obtaining professional degrees or certificates will obtain employment upon receiving the degree or certificate.

Second, the regulation would be revised to refer not just to current obligations but also to expected obligations. This would make the reference to obligations parallel to the statute and regulation's references to current and expected income. Proposed comment 34(a)(4)(i)(A)–2 would clarify that, where two different creditors are extending loans simultaneously to the same consumer, one a first-lien loan and the other a subordinate-lien loan, each creditor would generally be expected to verify the obligation the consumer is undertaking with the other creditor. A pattern or practice of failing to do so would create a presumption of a violation.

Third, the revised regulation would make clear that creditors may rely on assets other than the collateral to determine repayment ability. An existing comment would be revised to give these examples: A savings accounts or investments that can be used by the consumer. The Board believes it is appropriate for lenders to consider non-collateral assets such as these in determining repayment ability, and for consumers to be free to substitute assets for income in meeting their obligations.

Fourth, minor revisions would be made to § 226.34(a)(4) solely for clarity. The term ''consumer'' in the regulation would be put in the plural, ''consumers,'' to reflect that the prohibition concerns a pattern or practice. The phrase ''based on consumers' collateral'' would be revised to read ''based on the value of consumers' collateral.'' No change in meaning is intended.

Proposed Presumptions

Section 226.34(a)(4) contains a provision creating a rebuttable presumption of a violation where a lender engages in a pattern or practice of failing to verify and document repayment ability. The proposed regulation would retain this presumption, which would be incorporated in proposed § 226.35(b)(1). The Board is also proposing to add new, rebuttable presumptions to § 226.34(a)(4) and, by incorporation, § 226.35(b)(1). These would be presumptions of a violation for engaging in a pattern or practice of failing to consider: consumers' ability to pay the loan based on the interest rate specified in the regulation (§ 226.34(a)(4)(i)(B)); consumers' ability to make fully-amortizing loan payments that include expected property taxes and homeowners insurance (§ 226.34(a)(4)(i)(C)); the ratio of borrowers' total debt obligations to income as of consummation (§ 226.34(a)(4)(i)(D)); and borrowers' residual income (§ 226.34(a)(4)(i)(E)).

A new comment 34(a)(4)(i)–1 would clarify that the presumption for failing to verify income as well as the proposed new presumptions would be rebuttable by the lender with evidence that the lender did not disregard repayment ability. The comment would also clarify that the presumptions are not exhaustive. That is, a creditor may violate § 226.34(a)(4) (or § 226.35(b)(1)) by patterns or practices other than those specified in paragraph 34(a)(4)(i).

Each of the proposed presumptions is discussed in turn below. Comment is sought generally on the appropriateness of the proposed presumptions, and on whether additional presumptions should be adopted.

Failure to verify. Section 226.34(a)(4) contains a provision creating a rebuttable presumption of a violation where a lender engages in a pattern or practice of failing to verify and document repayment ability. The proposed regulation would retain this presumption, though it would be placed, along with other proposed new presumptions, in new sub-paragraph (i) of § 226.34(a)(4). It would also be revised to refer explicitly to the aspects of repayment ability identified in § 226.34(a)(4), namely, borrower's current and reasonably expected income and assets, current and reasonably expected obligations, and employment. It would also refer to the verification requirements stated in § 226.35(b)(2)(i). Under § 226.35(b)(2), a lender would be required to verify amounts the lender relies on by the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income and assets. *See* part VII.C. A new comment would clarify that a pattern or practice of failing to verify obligations would also trigger a presumption of a violation. It would indicate, however, that a credit report generally may be used to verify obligations.

Ability to make fully-indexed, fully-amortizing payments. Variable rate mortgages with discounted initial rates have become common in the subprime market. In a typical example, a loan would have an index and margin at consummation of 11.5 percent but a discounted initial rate for the first two years of 7 percent. Determining repayment ability on the basis of the initial rate would not give a realistic picture of the borrower's ability to afford the loan once the rate began adjusting according to the agreed index and margin.[51] The Board is proposing in § 226.34(a)(4)(i)(B) that a pattern or practice of failing to consider a borrower's repayment ability at the fully-indexed rate would create a presumption of a violation of § 226.34(a)(4) (or § 226.35(b)(1)).

Section 226.34(a)(4)(i)(B) would also address the case of a step-rate loan, a loan in which specific interest rate changes are agreed to in advance. For example, the parties could agree that the interest rate on the loan would be 5 percent for two years, 6 percent for two years, and 7 percent thereafter. The regulation would provide that, for such loans, a failure to consider the borrower's repayment ability at the highest interest rate possible within the first seven years of the loan's term (seven percent in the example) would create a presumption of a violation. The Board seeks comment on whether a shorter period, such as five years, would be appropriate.

The Board also seeks comment on whether this presumption should be modified to accommodate loans with balloon payments and, if so, how it should be modified.

Borrower debt-to-income ratio and residual income. The proposed presumptions of a violation for failure to consider the debt-to-income ratio (§ 226.34(a)(4)(i)(D)) or residual income ((§ 226.34(a)(4)(i)(E)) reflect the fact that this information generally is part of a responsible determination of repayment ability. Comment 34(a)(4)(i)(D)–1 would clarify, however, that the Board is not proposing a specific debt-to-income ratio that would create a presumption of a violation; nor is the Board proposing a specific ratio that would be a safe harbor. Similarly, comment 34(a)(4)(i)(E)–1 would indicate that the regulation does not require a specific level of residual income.

The Board is concerned that making a specific debt-to-income ratio or residual income level either a presumptive violation or a safe harbor could limit credit availability without providing adequate off-setting benefits. These are but two of many factors that determine repayment ability. For example, depending on the circumstances, the repayment risk implied by a high debt-to-income ratio could be offset by other factors that reduce the risk, such as a high credit score and a substantial down payment. The Board is reluctant to adopt a quantitative standard for one or two underwriting factors when repayment ability depends on the totality of many inter-relating factors.

It is possible, however, that adopting a quantitative standard for the debt-to-income ratio or other underwriting factors would provide at least some benefit to creditors and, by extension, consumers, by providing bright lines. The Board seeks comment on whether it should adopt a presumption of a violation, or a safe harbor, at a 50 percent debt-to-income ratio, or at a lower or higher ratio. What exceptions would be necessary for borrowers with high incomes or substantial assets, or for other cases? Comment is also sought on whether the Board should in addition, or instead, adopt quantitative standards for presumptive violations, or safe harbors, based on other underwriting factors.

Property taxes and insurance. Section 226.34(a)(4)(i)(C) would create a separate presumption of a violation of § 226.34(a)(4) (or § 226.35(b)(1)) for a pattern or practice of failing to consider the borrower's repayment ability based on a fully-amortizing payment that includes expected property taxes,

[51] As discussed in part IV above, concerns about underwriting practices for products with introductory rates or payments led the Board and the other federal supervisory agencies to issue guidance advising institutions to qualify borrowers using the fully-indexed rate and fully amortizing payments.

homeowners insurance, and other specified housing expenses. This is intended to address concerns that some creditors would determine a borrower's ability to repay a nontraditional loan that offered an option to defer principal or interest for several years on the basis of a payment that was non-amortizing (interest only) or negatively amortizing (less than interest). Negative amortization also can arise on variable-rate transactions with annual payment caps. The proposed presumption would encourage lenders to consider the fully-amortizing payment, as the Subprime Guidance advises lenders to do. *See* part V. The fully-amortizing payment would be based on the term of the loan. For example, the amortizing payment for a 2–28 ARM would be calculated based on a 30-year amortization schedule.

Proposed Time Horizon

The Board recognizes that it may not be reasonable, or to consumers' benefit, to hold creditors responsible for assuring repayment ability for the life of a loan. Most mortgage loans have terms of thirty years but prepay long before that. The Board seeks to ensure that consumers retain the ability to exchange lower initial payments for higher payments later, or for a balloon payment at the end of the loan. Accordingly, a safe harbor for creditors may be appropriate so long as it assures payments will be affordable for a reasonable time. Proposed § 226.34(a)(4)(ii) would provide that a creditor does not violate § 226.34(a)(4) if the creditor has a reasonable basis to believe that consumers will be able to make loan payments for at least seven years, considering each of the factors identified in § 226.34(a)(4)(i) (such as the fully-indexed rate and the fully-amortizing payment schedule) and any other factors relevant to determining repayment ability.

This proposal is not intended to preclude creditors from offering loans with substantial payment increases before seven years. If such loans fell outside of the safe harbor, they could nonetheless be justified in appropriate circumstances. For example, a consumer with a documented intent to sell the home within three years may reasonably choose a loan with a substantial payment increase in the third year. The Board seeks comment, however, on whether specifying a shorter time horizon, such as five years, would be appropriate.

General Request for Comment

In addition to the specific requests for comment stated above, the Board seeks comment on whether proposed §§ 226.34(a)(4) and 226.35(b)(1) would ensure that creditors adequately consider repayment ability without unduly constraining credit availability. The Board seeks data and information that could help the Board evaluate the costs and benefits of the proposal as it would affect the subprime market and any portion of the alt-A market to which the proposal may apply.

C. Verification of Income and Assets Relied on—§ 226.35(b)(2)

Proposed § 226.35(b)(2) would prohibit creditors in a transaction subject to § 226.35(a) from relying on amounts of assets or income, including expected income, in extending credit unless the creditor verifies such amounts. Creditors who fail to verify income or assets before extending credit are given a safe harbor if they can show that the amounts of the consumer's income or assets relied on were not materially greater than what the creditor could have documented at consummation.

Public Comment on Stated Income Lending

In the hearing notice, the Board solicited comment on the following questions:

- Whether stated income or low-documentation loans should be prohibited for certain loans, such as loans to subprime borrowers?
- Whether stated income or low-documentation loans should be prohibited for higher-risk loans, for example, for loans with high loan-to-value ratios?
- How a restriction on stated income or low-documentation loans would affect consumers and the type and terms of credit offered?
- Whether lenders should be required to disclose to the consumer that a stated income loan is being offered and allow the consumer the option to document income?

Consumer and community groups, individuals, and political officials, and some financial institutions and groups, favored greater restrictions on stated income loans for two reasons. First, some borrowers who could easily document their income have been harmed by receiving stated income loans that cost them more than a full documentation loan. According to commenters, these borrowers did not realize that they could have received a less costly loan by documenting their incomes. Second, other borrowers have been harmed when originators inflated their incomes—often without consumers' knowledge—to assure the originator would be able to make the loan or to enable the originator to make a larger loan, which might have higher payments that were less affordable to the consumer. To address these concerns, these commenters favored requiring creditors to obtain some documentation to support a consumer's statement of income or assets. Some suggested that documentation be required only for subprime loans, while others suggested it be required for all loans.

In contrast, most financial institution and financial services trade group commenters opposed prohibiting stated income loans. These commenters argued that financial institutions should retain flexibility to accommodate borrowers who may have difficulty fully documenting their income, or whose credit risk profile is strong enough that their income is not used as an underwriting factor. Some of these commenters did, however, support the banking agencies' use of guidance, such as the Subprime Statement, to address any risks of stated income loans. One major mortgage lender supported limiting stated income lending in subprime loans by a new regulation, if the regulation allowed for mitigating circumstances.

Discussion

Until recently, large and increasing numbers of home-secured loans in the subprime market were underwritten without fully verifying the borrower's income and assets.[52] The share of ''low doc'' and ''no doc'' loan originations in the securitized subprime market rose from 20 percent in 2000, to 30 percent in 2004, to 40 percent in 2006.[53] Low and no documentation loans are more prevalent in the Alt-A market, where originations of such loans in securitized pools rose from about 60 percent in 2000–2004 to 80 percent in 2006. Not all low doc or no doc loans are stated income loans (because in some cases originators did not rely on income or assets as the source of repayment), but many are.

Lending based on unverified, or minimally verified, incomes or assets can be appropriate for consumers whose risk profiles justify the potential increased risk and who might otherwise have to incur a significant cost to document their incomes or assets. The practice, however, increases the risk

[52] *See* U.S. Gov't Accountability Office, GAO–08–78R, *Information on Recent Default and Foreclosure Trends for Home Mortgages and Associated Economic and Market Developments* 5 (2007); Fannie Mae, Weekly *Economic Commentary* (Mar. 26, 2007).

[53] Figures calculated from First American Loan Performance data.

that credit is extended on the basis of inflated incomes and assets, which, in turn, can injure not just the particular borrowers whose incomes or assets were inflated but their neighbors, as well. The practice also presents an opportunity for originators to mislead consumers who could easily document their incomes and assets into paying a premium for a stated income or stated asset loan. These concerns are addressed in turn below.

Risk of inflated incomes and assets. There is anecdotal evidence that the incomes used in stated income loans were often inflated.[54] There is also evidence in the form of a higher rate of default for low doc and no doc loans (many of which are stated income loans) than for full documentation loans, and in the increase in the rate of default for low/no doc loans originated when underwriting standards were declining.[55]

Stated income lending programs give originators incentives as well as opportunities to inflate an applicant's income or assets, or to encourage applicants to do so. Compensating the originator based on loan size and origination volume, common practices, may give the originator incentives to maximize loan size and origination volume at the expense of loan quality. Inflating income or assets can increase both loan size and origination volume, because it can cause a creditor to accept an application that would otherwise have been rejected or met with an offer of a smaller loan.

The nature of the application process makes it possible that an applicant would not learn that the originator had inflated the applicant's income or assets. In many cases, applicants may not even know that they are obtaining stated income loans. They may have given the originator documents verifying their income and assets that the originator kept from the loan file so that the loan could be classified as ''stated income, stated assets.'' If an applicant has applied knowingly for a stated income or stated assets loan, the originator may fill out the financial statement on the standard application form based on information the applicant provides orally. The applicant may not review the form closely enough to detect errors in the stated income or assets, especially if seeing the form for the first time at the closing table. A consumer who detects errors at the closing table may not realize their importance or may face constraints that make it particularly difficult to walk away from the table without the loan.

While some originators may inflate income without consumers' knowledge, other originators may tacitly encourage applicants to knowingly state inflated incomes and assets by making it clear that their actual incomes and assets are not high enough to qualify them for the loans they seek. Such originators may reassure applicants that this is a benign and common practice. In addition, applicants may inflate their incomes and assets on their own initiative in circumstances where the originator does not have reason to know.

Injuries from inflated income and assets. The injuries to consumers from extending credit based on inflated incomes and assets are apparent. Borrowers whose loans are underwritten based on inflated income may receive larger loans with payments larger than they can comfortably afford and, therefore, face a higher risk of default as well as a higher risk of serious delinquency leading to foreclosure or distress sale. These risks are particularly pronounced for borrowers in the subprime market because their financial situations often are more precarious. The injuries caused by income inflation are not limited either to the particular borrowers whose incomes were inflated by the originator, nor to particular borrowers who inflated their incomes on their own. The practice can injure many other consumers, too. Inflating applicant incomes raises the risk of distress sales and foreclosures, concentrations of which can depress an entire community. Moreover, a widespread practice of inflating applicant incomes in an area with rapid house price appreciation—the kind of area where the practice may be most likely to arise—may fuel this appreciation and contribute to a ''bubble.''

Undisclosed premiums. Stated income lending also potentially injures consumers by leading them to pay more for their loans than they otherwise would. There is generally a premium for a stated income loan. An originator may not have sufficient incentive to disclose the premium on its own initiative because collecting and reviewing documents could slow down the origination process, reduce the number of loans an originator produces in a period, and, therefore, reduce the originator's compensation for the period. The risk that a consumer would not be aware of the premium may be particularly acute where products are complex, as is often true in the subprime market and was, at least until recently, true in the alt-A market due to the rapid growth of interest-only loans and option ARMs. Thus, consumers who can document income with little effort may choose not to because they are unaware of the cost of a stated income loan. Such consumers are effectively deprived of an opportunity to shop for a potentially lower-rate loan requiring full documentation.

The Board recognizes that stated income lending in the subprime market may have potential benefits. It may speed credit access by several days for consumers who need credit on an emergency basis. It may save some consumers from expending significant effort to document their income, and it may provide access to credit for consumers who otherwise would not have access because they actually cannot document their income, for whatever reason. For the reasons discussed above, however, the Board believes that, within the subprime market, where risks to consumers are already elevated, the potential benefits to consumers of stated income/stated asset lending may be outweighed by the potential injury to consumers and competition. Stated-income lending is a significant part of the neighboring alt-A market, but, there too, it can raise concerns. Until the recent tightening of underwriting standards in the alt-A market, stated-income lending was increasingly layered on top of other risks, such as loan terms that permit the borrower to defer payment of interest or principal.

The Board's Proposal

To address the injuries to consumers from stated income loans in the higher-priced market, the Board proposes to require creditors to verify the income and assets *they rely on* with third-party documents that provide reasonably reliable evidence such as W–2 forms, tax returns, payroll receipts, or financial institution records. The rule is intended to be flexible and appropriately balance costs with benefits.

The benefits of the proposal would appear to be significant. The rule should make it more difficult for any party to inflate incomes or assets on higher-priced mortgage loans and, therefore,

[54] *See* Mortgage Asset Research Inst., Inc., *Eighth Periodic Mortgage Fraud Case Report to the Mortgage Bankers Association* (2006) (reporting that 90 of 100 stated income loans sampled used inflated income when compared to tax return data); Fitch Ratings, *Drivers of 2006 Subprime Vintage Performance (Fitch 2006 Subprime Performance)* (November 13, 2007) (reporting that stated income loans with high combined loan to value ratios appear to have become vehicles for fraud).

[55] Michelle A. Danis and Anthony Pennington-Cross, *The Delinquency of Subprime Mortgages*, Journal of Economics and Business (forthcoming 2007); *see also Fitch 2006 Subprime Performance* (stating that lack of income verification, as opposed to lack of employment or down payment verification, caused 2006 low documentation loans delinquencies to be higher than earlier vintages' low documentation loans).

reduce the frequency of the practice and the injuries to consumers the practice can cause. The rule also should eliminate the risk that consumers with higher-priced mortgage loans who could document income would unknowingly pay more for a loan that did not require documentation.

The proposal could have costs as well. In general, the time from application to closing could be longer if an applicant were required to produce, and the creditor required to review, third party documents verifying income. Also, consumers who did not have documents verifying their income readily at hand would face the inconvenience of obtaining such documents. Another cost could be reduced access to credit for consumers who would have difficulty documenting their income. As explained further below, the Board believes the regulation is sufficiently flexible to keep these costs to reasonable levels relative to the expected benefits of the proposed rule.

Five elements of the proposal are intended to reduce the costs to consumers and creditors that income verification may entail. First, the proposed rule requires that only the income or assets the creditor relies upon in approving the extension of credit be verified. For example, if a creditor does not rely on a part of the consumer's income, such as an annual bonus, in approving the extension of credit, the creditor would not need to verify the consumer's bonus.[56]

Second, the proposed rule specifically authorizes a creditor to rely on W–2 forms, tax returns, payroll receipts, and financial institution records. These kinds of documents generally have proven to be reliable sources of information about borrowers' income and assets. Moreover, most consumers can, or should be able to, produce one of these kinds of documents with little difficulty. Thus, the proposed safe harbor for relying on one of these kinds of documents should protect consumers while minimizing costs.

Third, creditors may use any other third-party documents that provide reasonably reliable evidence of the borrower's income and assets. Examples of other third-party documents that provide reasonably reliable evidence of the borrower's income include check-cashing receipts or a written statement from the consumer's employer. *See* proposed comment 35(b)(2)–4. These are but examples, and a creditor may rely on third-party documents of any kind so long as they are reasonably reliable. The one kind of document that is categorically excluded is a statement only from the consumer.

Fourth, the proposal is not intended to limit creditors' ability to adjust their underwriting standards for consumers who for legitimate reasons have difficulty documenting income, such as self-employed borrowers, or employed borrowers with irregular income.[57] For example, the rule would not dictate that a creditor must have at least two year's tax returns to approve an extension of credit to a self-employed borrower. As another example, if a creditor relied on a statement by an employed applicant that the applicant was likely to receive an annual bonus from the employer, the creditor could verify the statement with third-party documents showing a consumer's past annual bonuses. *See* proposed comment 35(b)(4)(i)–1. The same would hold for credit extended to employees who work on commission.

Fifth, creditors who have extended credit to a consumer and wish to extend new credit to the same consumer need not re-collect documents that the creditor previously collected from the consumer if the documents would not have changed since they were initially verified. *See* proposed comment 35(b)(2)(i)–4. For example, if the creditor has collected the consumer's 2006 tax return for a loan in May 2007, and the creditor makes another loan to that consumer in August 2007, the creditor may rely on the 2006 tax return.

Proposed safe harbor. The proposed rule would contain a safe harbor for creditors who fail to verify income before extending credit if the amounts of income or assets relied on were not materially greater than the creditor could have verified when the extension of credit was consummated. *See* proposed § 226.35(b)(2)(ii) and comment 35(b)(2)(ii)–1. The proposed safe harbor would cover cases where the creditor's failure to verify income would not have altered the decision to extend credit to the consumer or the terms of the credit.

Requests for Comment

The Board seeks comment on whether, and in what specific circumstance, the proposed rule would reduce access to credit for certain borrowers, such as the self-employed, who may have difficulty documenting income and assets. The Board also requests comment on whether the rule could be made more flexible without undermining consumer protection. Comment on these questions is solicited both with respect to the subprime market and any part of the alt-A market that the proposed definition of ''higher-priced mortgage loan'' would tend to cover. Comment is also sought on the appropriateness of the proposed safe harbor, and on whether other safe harbors would be appropriate.

Potential alternatives. The Board believes the proposed rule would provide consumers a significant new protection against lending based on income or asset inflation. It is also expected that creditors, regulators, and courts would find it relatively easy to determine compliance with the proposed rule. The Board recognizes, however, that the rule is broad in that it imposes a blanket requirement on all creditors to verify, for every higher-priced mortgage loan they originate, the income and assets they rely on, without consideration of the extent to which the risks of inflating income or assets may vary from case to case. This rule could increase costs for creditors as well as consumers. The rule is also broad in another respect: It imposes a blanket verification requirement on creditors even though consumers, themselves, may inflate their stated incomes without the creditor's knowledge. Such consumers might in some instances seek to enforce the proposed rule through civil actions.

For these reasons, the Board seeks suggestions of narrower alternatives that would impose fewer costs on creditors and consumers while providing sufficient protection to consumers who may be injured, directly or indirectly, by stated income lending. For example, should the Board, instead of adopting the proposed rule, prohibit creditors and mortgage brokers from inflating incomes, influencing consumers to inflate incomes, or extending credit while having reason to believe that a consumer inflated income or was influenced to inflate income? Would a rule attempting to distinguish cases where creditors or brokers were not complicit in applicants' inflating incomes be cost-effective and practicable? If such a rule were adopted, should it provide a safe harbor for verifying income?

Subordinate-lien loans. The Board's proposal covers both first-lien and subordinate-lien loans, but the Board requests comment on whether the proposed rule should make an exception for all subordinate-lien loans, or for subordinate-lien loans in amounts

[56] Creditors would, however, still be prohibited from engaging in a pattern or practice of extending higher-priced mortgage loans to consumers based on the collateral without regard to repayment ability. *See* proposed § 226.35(b)(1). Consequently, creditors would not be able to evade the proposed income verification rule by consistently declining to consider income or assets.

[57] For depository institutions and their affiliates, safety and soundness considerations would continue to govern underwriting, as always.

less than a specified dollar amount, or less than a specified percentage of the home's value. Requiring income and asset verification for subordinate-lien loans could in some cases increase costs without providing meaningful protection to consumers. For example, if a consumer has a record of making timely payments on a first-lien loan, then verifying income or assets for a small subordinate-lien loan—assuming the creditor relied on income or assets to make the credit decision—may not provide sufficient additional information about the borrower's ability to repay the debt to justify the cost of verification. Thus, the Board seeks suggestions for potential exemptions for subordinate-lien loans that would not undermine consumer protection.

D. Prepayment Penalties—§ 226.32(d)(6) and (7); § 226.35(b)(3)

Pursuant to TILA Section 129(c), a HOEPA-covered loan may not provide for a prepayment penalty unless: the borrower's debt-to-income (DTI) ratio at consummation does not exceed 50 percent (and debt and income are verified); prepayment is not made using funds from a refinancing by the same creditor or its affiliate; the penalty term does not exceed five years from loan consummation; and the penalty is not prohibited under other applicable law. 15 U.S.C. 1639(c); *see also* 12 CFR 226.32(d)(6) and (7). The Board proposes to apply these restrictions to higher-priced mortgage loans. In addition, the Board proposes to require that the period during which a creditor may impose a prepayment penalty expire at least sixty days before the first date, if any, on which the periodic payment amount may increase under the terms of the loan.

Public Comments on Prepayment Penalties

In connection with its June 14, 2007 HOEPA hearing, the Board requested public comment on the following questions:

- Should prepayment penalties be restricted? For example, should prepayment penalties that extend beyond the first adjustment period on an ARM be prohibited?
- Would enhanced disclosure of prepayment penalties help address concerns about abuses?
- How would a prohibition or restriction on prepayment penalties affect consumers and the type and terms of credit offered?

Consumer and community groups generally commented that prepayment penalties are linked to higher loan costs for some borrowers. Many brokers and loan officers have at least some discretion to decide what interest rate to offer borrowers. In general, the higher the rate, the greater the compensation the lender pays the originator. Because the lender seeks to recover this compensation from the borrower, the lender prefers loans with prepayment payment penalties in case the borrower refinances the loan. Consumer and community group commenters stated that consumers shopping for home loans do not consider back-end costs such as prepayment penalties but rather focus on monthly payments or ''teaser'' interest rates on ARMs. In addition, they maintained that prepayment penalties discourage borrowers from refinancing unaffordable loans or cause them to lose home equity when the penalty amount is included in the principal amount of a refinance loan.

Accordingly, most consumer and community groups recommended that the Board ban prepayment penalties on subprime home loans, a recommendation also made by state and local government officials and a trade group representing community development financial institutions. Consumer and community groups suggested that, at a minimum, if the Board permits prepayment penalties, it should require prepayment penalties for fixed-rate loans to expire two years after loan origination and prepayment penalties on subprime hybrid ARMs to terminate between sixty days and six months prior to the first rate adjustment on the loan. These groups stated that, although disclosures could be improved, doing so would not solve the problems associated with prepayment penalties in the subprime market.

Most financial institutions and financial services trade groups recommended that the Board concentrate on improving disclosures and limit any regulation to requiring that the penalty term on a subprime hybrid ARM end before the first rate adjustment. A majority of these commenters recommended that borrowers be allowed to refinance without penalty starting sixty days prior the first reset; a few commenters recommended thirty days. These commenters stated that additional restrictions on prepayment penalties would reduce the amount of credit lenders and investors make available in the affected market. With respect to fixed-rate loans, some financial institutions and industry trade groups stated that a three-year limit on the term of a prepayment penalty would be appropriate. Some credit union trade groups recommended a maximum term, such as one or two years, for a prepayment penalty, including a penalty on a fixed-rate loan.

Discussion

Prepayment risk measures the possibility that a loan will be repaid before the end of the loan term.[58] Because a prepayment results in payment of the principal ahead of schedule, the lender (or secondary-market investor) must reinvest the funds at the new market rate, which may be lower than the old rate, particularly in the case of a refinancing. A lender also may incur certain fixed costs, such as payments to a mortgage broker, that the lender seeks to recover even if the loan is repaid early. Lenders generally account for the risk of prepayment in setting the interest rate on the loan, and usually in the subprime market (but only occasionally in the prime market) also account for the risk by including a prepayment penalty clause in the loan agreement.

In principle, a lender may offer a consumer a choice between a loan with a prepayment penalty and a loan that does not have a penalty but has a higher interest rate. Consumers in the subprime market who understood the potential trade-off between the interest rate and prepayment penalty might be willing to accept a contract with a prepayment penalty in exchange for a lower interest rate. For example, they may expect that they will refinance their loans after taking some time to improve their credit scores enough to qualify for a lower rate. Such consumers may be willing to accept a penalty with a term roughly equivalent to the time they expect it will take them to improve their scores. Accordingly, prepayment penalties may benefit individual borrowers in the subprime market who in certain circumstances would voluntarily choose them.

Prepayment penalties may also benefit borrowers in the subprime market overall. Investors may find prepayment patterns more difficult to predict for subprime loans than for prime loans because prepayment of subprime loans depends not only on interest rate changes (as does prepayment of prime loans) but also on changes to borrowers' credit profiles that affect their chances of qualifying for a lower-rate loan. To the extent that penalties make the cash flow from investments backed by subprime mortgage more predictable, the secondary market may become more

[58] Robert B. Avery, Glenn B. Canner & Robert E. Cook, *New Data Reported under HMDA and Its Application in Fair Lending Enforcement,* 2005 Fed. Reserve Bulletin 344, 368.

liquid. A more liquid secondary market may benefit borrowers by lowering interest rates and increasing credit availability.

Prepayment penalties, however, also impose substantial costs on borrowers that may not be clear to them. These penalties can prevent borrowers who cannot afford to pay the penalty, either in cash or from home equity, from exiting unaffordable or high-cost loans. Moreover, borrowers who refinance and pay a penalty decrease their home equity and increase their loan balance if they finance the penalty into the new loan—as is likely if they are refinancing because of financial distress. The loss of home equity and the payment of interest on the financed penalty amount are particularly concerning if the refinance loan represents a loan ''flipping'' abuse.

The injuries prepayment penalties may cause consumers are particularly concerning because of serious questions as to whether borrowers knowingly accept the risk of such injuries. Current disclosures of prepayment penalties, including the disclosure of penalties in Regulation Z § 226.18(k), do not appear adequate to ensure transparency. Moreover, a Federal Trade Commission report concluded, based on consumer testing, that even an improved disclosure of the prepayment penalty left a substantial portion of the prime and subprime consumers interviewed without a basic understanding of the penalty.[59] It is questionable whether consumers can accurately factor a contingent cost such as a prepayment penalty into the price of a loan; unlike the interest rate and points, a prepayment penalty is not included in the APR.

The lack of transparency is particularly troubling when originators have incentives to impose prepayment penalty clauses on consumers without giving them a genuine choice. Individual originators may be able to earn larger commissions or yield spread premiums on subprime loans by securing loan agreements with penalties, which increase a lender's certainty of recouping from the consumer its payment to the originator. Originators may seek to impose prepayment penalty clauses on consumers simply to increase their own compensation. This risk appears particularly high in the subprime market, where most loans have had prepayment penalties and borrowers may not have had a realistic opportunity to negotiate for a loan without a penalty.

The Board plans to use consumer testing to improve the disclosure of prepayment penalties as part of its ongoing review of closed-end TILA rules, but the Board recognizes that disclosure has its limits. The prepayment penalty may be a term that highlights those limits. It is complicated for borrowers to process and of secondary importance to them compared to other loan terms. Accordingly, the Board is proposing to restrict prepayment penalties on higher-priced mortgage loans.

The Board's Proposal—In General

The Board proposes to apply HOEPA's prepayment penalty restrictions to a broader segment of the market, higher-priced mortgage loans, and to add a new restriction for mortgages whose payments may increase, such as ARMs. A HOEPA—covered loan may not provide for a prepayment penalty unless: the borrower's DTI ratio at consummation does not exceed 50 percent (and debt and income are verified); prepayment is not made using funds from a refinancing by the same creditor or its affiliate; the penalty term does not exceed five years from loan consummation; and the penalty is not prohibited under other applicable law. 15 U.S.C. 1639(c); § 226.32(d)(6) and (7). The Board proposes to apply these restrictions to higher-priced mortgage loans. In addition, the Board proposes to require that the period during which a creditor may impose a prepayment penalty expire at least sixty days before the first date, if any, on which the periodic payment amount may increase under the terms of the loan.[60]

The proposal is intended to prohibit prepayment penalties in cases where they may pose the greatest risk of injury to consumers. The 50 percent DTI cap, while not a perfect measure of affordability, may tend to reduce the likelihood that an unaffordable loan will have a prepayment penalty, which would hinder a consumer's ability to exit the loan by refinancing the loan or selling the house. The same-creditor restriction may reduce the likelihood that a creditor could ''pack'' a prepayment penalty into a loan as part of a strategy to strip the borrower's equity by flipping the loan in a short time. The five-year restriction would prevent creditors from ''trapping'' consumers in a loan for an exceedingly long period. The mandatory expiration of the penalty before a possible payment increase would help prevent consumers who had been enticed by a discounted initial payment from being trapped when the payment increased. Thus, the proposal would prohibit prepayment penalties in circumstances indicating a higher risk of injury.

The proposal is also intended to preserve the potential benefits of penalties to consumers in cases where the penalties may present less risk to them. Apart from the riskier penalty clauses that would be prohibited, individual consumers would retain a potential option to choose between a penalty clause and a higher interest rate. There are legitimate concerns that consumers are not frequently offered a clear and genuine choice. The Board will be seeking to determine through consumer testing whether it can develop a clear and effective disclosure of a consumer's options. There are also legitimate concerns that, no matter how clearly the choice is disclosed, product complexity and other constraints will tend to undermine individual consumer decision making. See part II.C. In this proposal, however, the Board is weighing against such concerns the potential benefit to all consumers in the subprime market from the increased liquidity that prepayment penalties may provide.

Specific Restrictions

Debt-to-income ratio. TILA and Regulation Z prohibit a prepayment penalty on a HOEPA loan if the borrower's DTI ratio at consummation exceeds 50 percent. 15 U.S.C. 1639(c)(2)(A)(i); § 226.32(d)(7)(iii). The Board proposes to apply this rule to higher-priced mortgage loans. Proposed staff comments would give examples of funds and obligations that creditors commonly classify as ''debt'' or ''income.'' Further, the proposal specifies that creditors may, but need not, look to widely accepted governmental and non-governmental underwriting standards to determine how to classify particular funds or obligations as ''debt'' or ''income.'' The Board does not propose to require creditors to use any particular standard for calculating debt or income. A creditor would not violate the prepayment penalty rule if its particular calculation method deviated from those in widely-used underwriting handbooks or manuals, so long as the creditor's method was reasonable.

The 50 percent DTI cap, while not a perfect measure of affordability, may tend to reduce the likelihood that an unaffordable loan will have a prepayment penalty, which would hinder a consumer's ability to exit the

[59] *Improving Mortgage Disclosures,* at 110.

[60] The interagency Statement on Subprime Lending provides that borrowers with certain ARMs should be given a reasonable period of time (typically, at least sixty days) prior to the first rate reset to refinance without penalty. 72 FR 37569, 37574, July 10, 2007.

loan by refinancing the loan or selling the house. Loans with high borrower DTI ratios can be affordable, depending on the borrower's circumstances. A borrower whose DTI ratio exceeds 50 percent at consummation, however, will likely have greater difficulty repaying a particular loan, all other things being equal, than a borrower with a lower DTI ratio.

TILA Section 129(c)(2)(A)(ii) states that the consumer's income and expenses are to be verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer (which verification may be in the form of a copy of a pay stub or other payment record supplied by the consumer). 15 U.S.C. 1639(c)(2)(A)(ii). The Board's proposal, however, does not permit verification of income, whether from employment by another person or self-employment, by a signed statement of the borrower alone. The proposed rule cross-references proposed § 226.35(b)(2)(i), which requires that income relied upon be verified by reasonably reliable third party documents.

There are three bases for the proposal to strengthen the statute's verification requirement. First, under TILA Section 129(l)(2), the Board has a broad authority to update HOEPA's protections as needed to prevent unfair practices. 15 U.S.C. 1639(l)(2)(A). For the reasons discussed in part VII.C., the Board believes that relying on a borrower's statement alone is unfair to consumers, regardless of whether the consumer is employed by another person, self-employed, or unemployed. Second, the Board has a broad authority under Section 129(l)(2) to update HOEPA's protections as needed to prevent their evasion. 15 U.S.C. 1639(l)(2)(A). A signed financial statement declaring all or most of a consumer's income to be self-employment income or income from sources other than employment could be used to evade the statute. Third, adopting a single income verification standard throughout proposed § 226.35(b) would facilitate compliance.

Same creditor. HOEPA does not permit a prepayment penalty on a HOEPA loan if a prepayment is made with amounts obtained by the consumer through a refinancing with the creditor or an affiliate of the creditor. 15 U.S.C. 1639(c)(2)(B). A prohibition on charging a prepayment penalty in the event of a same-lender refinance discourages originators from seeking to ''flip'' the loan. To foreclose evasion by creditors who might direct borrowers to refinance with an affiliated creditor, the same-lender refinance rule covers loans by a creditor's affiliate. The Board requests comment on the effect of imposing the same-creditor restriction on a market where loans are frequently sold.

Five-year limit. HOEPA limits the term of a prepayment penalty on a HOEPA loan to five years after loan origination. 15 U.S.C. 1639(c)(2)(C). The Board believes it would be appropriate to apply the same limitation to prepayment penalties on higher-priced mortgage loans. The Board seeks comment, however, on whether five years is the appropriate limit considering both the need to protect consumers from abuse and the potential benefits of prepayment penalties for consumers. As discussed below, under the proposal a prepayment penalty would have to expire earlier than five years if the payment may increase before then.

Payment increase. In addition to extending the coverage of HOEPA's prepayment penalty restrictions to a broader segment of the market, the Board proposes to require that, for higher-priced mortgage loans, the period during which a penalty may be imposed expire at least sixty days prior to the first date, if any, on which the periodic payment amount *may* increase. Mandatory expiration of the penalty before a possible payment increase would help prevent consumers who had been enticed by a discounted initial payment from being trapped when the payment increased.

The proposed rule would depend on when the rate may increase under the loan agreement, and not on when the rate actually does increase. Although a periodic payment may not actually increase on a rate adjustment date, a creditor may not know whether a borrower's payment will increase in enough time for the creditor to give the borrower a long enough pre-adjustment window in which to refinance without penalty. The proposed bright-line rule would enable creditors and borrowers to know with certainty, at or before loan consummation, the date after which creditors may no longer require a borrower to pay a prepayment penalty.

Periodic payments may increase for a variety of reasons, including a scheduled shift from a discounted interest rate to a fully indexed rate, a change in index value on a non-discounted ARM, or mandatory amortization of principal when deferred principal or interest exceeds a certain threshold. For the sake of simplicity, the proposal would set a single standard for all higher-priced mortgage loans for which periodic payments may increase. For example, if a payment-option ARM allows minimum monthly payments for one year and the first adjustment to the monthly payment is scheduled for one year after origination, a prepayment penalty term would have to end at least sixty days before the end of the first year.

Furthermore, if monthly payments may change before the first scheduled payment adjustment, a prepayment penalty term would have to end at least sixty days before the first date on which such an unscheduled payment change could occur. For instance, the first adjustment on a loan may be scheduled for three years after loan origination, but the creditor may have the right to make an unscheduled payment change if negative amortization causes the loan's principal amount to exceed a certain threshold. In this case, a prepayment penalty could not be charged fewer than sixty days before the first date on which negative amortization possibly could lead to an increase in the borrower's monthly payments.

The mandatory expiration would apply only when *required* payments may increase, not when consumers may opt to pay more than their agreement requires. Moreover, it would not apply to a payment increase due to a borrower's late payment, default, or delinquency.

HMDA data for 2004 through 2006 suggest that a sixty-day period before a payment change would be enough time for a significant majority of subprime borrowers to shop for a new loan to refinance the existing obligation. Creditors report price data on first-lien loans if the difference between a loan's APR and the yield on the comparable Treasury security is equal to or greater than 3 percentage points. For 90 percent of the first-lien higher-priced loans, the period between loan application and origination was less than fifty days. For 75 percent of the first-lien higher-priced loans, the period was less than forty-two days.

Requests for Comment

The Board asks for comment on whether the proposal appropriately balances the potential benefits and potential costs of prepayment penalties to consumers who have higher-priced mortgage loans. The Board asks for specific comment on whether the term allowed for a prepayment penalty should be shorter than five years. Specific comment is also sought on the proposal to strengthen the statute's income verification requirement, and on the potential effects of the same-creditor restriction in a market where creditors sell many of their loans.

The Board also requests comment on the proposal to require that a prepayment penalty period on a higher-priced loan expire at least sixty days prior to the first date on which a periodic payment may increase. In particular, the Board asks for comment on the number of days before a possible payment increase that a prepayment penalty should expire. In addition, the Board solicits comments on whether this provision should apply only to loans whose periodic payment may change within a certain number of years (for example, three or five years) after loan consummation. The Board also seeks comment on whether particular loan types (for example, graduated payment, step-rate, or growth equity transactions) should be exempted from a rule on prepayment penalty expiration.

Comment on these matters is sought both with respect to the subprime market and any part of the alt-A market the proposal may cover. Comment is also sought both with respect to higher-priced mortgage loans and with respect to the sub-category of HOEPA loans.

Notice of Change to Interest Rate and Payment

Under Regulation Z § 226.20(c), an adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction requires new disclosures to the consumer. At least 25, but no more than 120, calendar days before a payment at a new level is due, disclosures must be delivered or placed in the mail that state, among other things, the new rate and payment amount, if any. A notice that combined information about a new payment and interest rate with information about the impending expiration of a prepayment penalty period could potentially benefit consumers.

Reconciling the current notice with the proposed prepayment penalty period could, however, be difficult. For example, some creditors set a consumer's new payment or rate 30 or 45 days before the first possible change in the monthly payment—after the proposal would require a prepayment penalty period to end. Also, notice of expiration might be more clear and conspicuous to a borrower if provided separately from the § 226.20(c) disclosures. Allowing a combined notice might distort borrower decision making. For example, consumers might mistake a notice of their ability to refinance without penalty as a recommendation that they refinance, though their loan may remain affordable and otherwise favorable compared to available alternatives.

An argument can be made that no separate notice of the upcoming expiration of a prepayment penalty period is necessary. Unlike a payment change, the amount of which may remain uncertain until relatively close to the date of any such change, both the creditor and the borrower will have information at loan consummation needed to determine when the prepayment penalty period will expire. On the other hand, consumers may benefit from being reminded when they may prepay without penalty.

The Board proposes to defer revising § 226.20(c) or drafting of new disclosure requirements connected with the proposed prepayment penalty period expiration regulation until the Board proposes comprehensive amendments to Regulation Z's closed-end disclosure provisions. Deferral would enable consumer testing of different disclosure options. In the interim, however, consumers might lack adequate information about when they may prepay without penalty. Accordingly, the Board requests comment on whether, if it adopts the proposed prepayment penalty expiration requirement, the Board should specifically address the requirement's interaction with § 226.20(c).

E. Requirement to Escrow—§ 226.35(b)(4)

The Board proposes to prohibit a creditor from making higher-priced loans secured by a first lien without establishing an escrow account for property taxes and homeowners insurance. Under the proposal, creditors may allow a borrower to ''opt out'' of the escrow, but not at or before consummation, only twelve months after. The proposed rule would appear in § 226.35(b)(4).

Public Comment on Escrows

The June 14, 2007 hearing notice solicited comment on the following questions:

- Should escrows for taxes and insurance be required for subprime mortgage loans?
- If escrows were required, should consumers be permitted to ''opt out'' of escrows?
- Should lenders be required to disclose the absence of escrows to consumers and if so, at what point during a transaction? Should lenders be required to disclose an estimate of the consumer's tax and insurance obligations?
- How would escrow requirements affect consumers and the type of and terms of credit offered?

Consumer and community groups that commented or testified urged the Board to require escrows on subprime loans. They cited the infrequency of escrows in the subprime market—one group cited a statistic in a servicing trade publication indicating that as few as one-quarter of subprime loans have escrow accounts. Commenters stated that escrows have long been a staple of the prime lending market and suggested that borrowers in the subprime market would benefit as much or more if escrows were available or required. They argued that lack of escrows in the subprime market enables originators to advertise and quote low monthly payments that do not include tax and insurance obligations, misleading borrowers, especially first-time homebuyers. Current homeowners whose monthly payments include contributions to an escrow account may believe that the originator who quotes them a payment without escrow contributions can lower the homeowner's mortgage payment. In reality, the payment on the new loan could be as high, or higher, when property taxes and homeowners insurance are taken into account. Commenters also stated that first-time homebuyers as well as current homeowners with escrow accounts may not be aware of the need to save on their own for tax and insurance payments if they are provided loans without escrows. These borrowers may struggle to meet those obligations when they come due, leaving them vulnerable to loan flipping and equity stripping.

Many lenders and financial services trade groups that testified or commented agree that escrowing taxes and insurance is generally beneficial to subprime borrowers as well as lenders, servicers, and investors. Some of these commenters favor a regulation to mandate escrows, assuming it provides them ample time to come into compliance. Some of these commenters, however, would prefer that the Board adopt guidance rather than a regulation to allow flexibility. Other commenters believe that consumers are generally well-enough informed about tax and insurance obligations to save on their own for these payments. These commenters contend that, if escrows were mandated, some potential borrowers would not be able to fund the escrow account at closing.

Discussion

The Board is concerned that the subprime market does not appear to

offer borrowers a genuine opportunity to escrow. Subprime servicers may not set up an escrow infrastructure at all, and subprime originators have disincentives to require or encourage borrowers to take advantage of escrows when they are available. A collective action problem prevails if each individual originator fears that offering escrows would put it at a disadvantage relative to competitors, even if originators collectively would benefit from escrows.[61] Each originator may fear losing business if it escrows. An originator that escrowed would have to quote a monthly payment that included taxes and insurance. Competitors that did not escrow could poach potential or actual customers of the originator by not including taxes and insurance in their quotes. So an originator may be unwilling to escrow without assurance that its competitors also would escrow, though if all originators escrowed then all would likely benefit.

This market failure causes consumers substantial injury. A lack of escrows in the subprime market may make it more likely that borrowers inadvertently take on mortgages they cannot afford because they focus only on the payment of principal and interest. A lack of escrows may also facilitate misleading payment quotes, which distort competition. Lack of escrows also may make it more likely that borrowers who have trouble saving on their own initiative and would prefer a forced saving plan such as an escrow will not have the resources to pay tax and insurance bills when they come due. This problem may be particularly acute in the subprime market, where borrowers are more likely to be cash-strapped. Failure to pay taxes and insurance is generally an act of default which may subject the property to a public auction or an acquisition by a public agency. Borrowers who face a tax or insurance bill they cannot pay are particularly vulnerable to predatory home equity loans because their situation is urgent.

While failure to escrow can cause consumers substantial injury, escrows can also impose costs on consumers. Some borrowers may not be able to afford the cost of funding an escrow at closing. Escrowing also creates an opportunity cost for borrowers who could use the funds for a more productive purpose and still meet their tax and insurance obligations. Some states address this cost at least in part by requiring that an escrow earn interest, but others do not impose such requirements. Moreover, the cost of setting up and administering escrows is passed on at least in part to consumers. The Board has considered these costs in formulating the following proposal.

The Board's Proposal

The Board is proposing to make escrow accounts mandatory on first-lien higher-priced mortgage loans and permit, but not require, creditors to offer borrowers an option to cancel escrows twelve months after consummation. The Board proposes to define ''escrow account'' by reference to the definition of ''escrow account'' in the U.S. Department of Housing and Urban Development's Regulation X (Real Estate Settlement Procedures Act (RESPA)).

The Board believes the proposed remedy for the injuries caused by the subprime market's failure to offer escrow accounts appropriately balances the benefits and costs of escrows. Creditors would have an option to allow consumers to limit the opportunity cost of escrow accounts by opting out after one year. The Board is proposing an ''opt out'' rather than an ''opt in'' regime because ''opt in'' would allow some originators to discourage borrowers from escrowing, creating pressure on other originators to follow suit and leaving the collective action problem unresolved. Moreover, an ''opt out'' available at closing or immediately thereafter would be subject to manipulation. If a consumer could opt out at, or soon after, closing, then some originators might still quote payments without taxes and insurance and tell consumers that they could keep their payments from going up by signing a piece of paper at or shortly after closing. A fairly long period may be required to prevent such circumvention, and to educate borrowers to the benefits of escrowing; the Board proposes twelve months.

Requests for Comment

The Board seeks comment on whether the benefits of the proposed regulation outweigh the costs. Comment is sought both with respect to the subprime market and with respect to any part of the alt-A market this proposal may cover.

The Board also seeks comment on whether creditors should be required, rather than permitted, to allow borrowers to opt out. Comment is also sought on whether a mandatory escrow period different from twelve months would be appropriate, and on whether consumers could effectively be protected from manipulation if the rule permitted them to opt out before closing or soon thereafter.

State Escrow Laws

The Board recognizes that some state laws limit creditors' ability to require escrows. In addition, certain state laws provide consumers a right to cancel an escrow that the consumer may exercise sooner than twelve months after closing. The Board's proposal would not be consistent with such laws and, if adopted, would preempt them to the extent of the inconsistency. The Board seeks information about which state laws would be inconsistent with this proposal.

Other Proposals on Escrows

Other parts of this proposal address other issues with escrows. Proposed § 226.35(b)(1) would require creditors to take into account taxes and insurance when determining whether a borrower can repay a loan. Proposed § 226.24(f)(3)(i)(C) would require advertisements that state a payment amount that does not include taxes and insurance to disclose that in close proximity to the payment amount.

F. Evasion Through Spurious Open-end Credit—§ 226.35(b)(5)

The Board's proposal to exclude HELOCs from the new rules in § 226.35 is discussed in subpart A. above. As noted, the Board recognizes this could lead some creditors to attempt to evade the requirements in § 226.35 by structuring credit as open-end instead of closed-end. Regulation Z § 226.34(b) addresses this risk as to HOEPA coverage by prohibiting structuring a transaction that does not meet the definition of ''open-end credit'' as a HELOC to evade HOEPA. The Board proposes to extend this approach to new § 226.35. Proposed § 226.35(b)(5) would prohibit a creditor from structuring a closed-end transaction—that is, a transaction that does not meet the definition of ''open-end credit''—as a HELOC to evade the limitations in § 226.35.

The Board recognizes that consumers may prefer HELOCs to closed-end home equity loans because of the added flexibility HELOCs provide them. It is not the Board's intention to limit consumers' ability to choose between these two ways of structuring home equity credit. An overly broad anti-evasion rule could potentially limit consumer choices by casting doubt on the validity of legitimate open-end plans. The Board seeks comment on the extent to which the proposed anti-evasion rule could have this consequence, and solicits suggestions

[61] An industry representative at the Board's 2007 hearing indicated that her company's internal analysis showed that escrows clearly improved loan performance. Transcript of HOEPA Hearing at 66 (Jun. 14, 2007), available at *http://www.federalreserve.gov/events/publichearings/hoepa/2007/20070614/transcript.pdf.*

for a more narrowly tailored rule. For example, the primary concern would appear to be with HELOCs that are substituted for closed-end home purchase loans and refinancings, which are usually first-lien loans, rather than with HELOCs taken for home improvement or other consumer purposes. The Board seeks comment on whether it should limit an anti-evasion rule to HELOCs secured by first liens where the consumer draws down all or most of the entire line of credit immediately after the account is opened. Would such a rule be effective in preventing evasion or would it be easily evaded itself?

VIII. Proposed Rules for Mortgage Loans—§ 226.36

Proposed § 226.35, discussed above, would apply certain new protections to higher-priced mortgage loans. In contrast, proposed § 226.36 would apply other new protections to mortgage loans generally, though only if secured by the consumer's principal dwelling. The proposal would prohibit: (1) Creditors from paying mortgage brokers more than an amount the broker disclosed to the consumer in advance as its total compensation; (2) creditors or mortgage brokers from coercing or influencing appraisers to misrepresent the value of a dwelling; and (3) servicers from engaging in unfair fee and billing practices. As with proposed § 226.35, however, proposed § 226.36 would not apply to HELOCs.

A. Creditor Payments to Mortgage Brokers—§ 226.36(a)

The Board proposes to prohibit a creditor from paying a mortgage broker in connection with a covered transaction unless the payment does not exceed an amount the broker has agreed in advance with the consumer will be the broker's total compensation. The agreement must also disclose that the consumer will pay the entire compensation even if all or part is paid directly by the creditor, and that a creditor's payment to a broker can influence the broker to offer the consumer loan terms or products that are not in the consumer's interest or are not the most favorable the consumer could obtain. Creditors could demonstrate compliance with the provision by obtaining a copy of the broker-consumer agreement and ensuring their payment to the broker does not exceed the amount stated in the agreement. The proposal would provide creditors two alternative means to comply, one where the creditor complies with a state law that provides consumers equivalent protection, a second where a creditor can demonstrate that its payments to a mortgage broker are not determined by reference to the transaction's interest rate.

Public Comment on Creditor Payments to Mortgage Brokers

Although the Board did not solicit comment on mortgage broker compensation in its notice of the June 2007 hearing, a number of commenters and some panelists raised the topic. In addition, the Board received information about broker compensation from panelists in the 2006 hearings.

Consumer and creditor representatives alike have raised concerns about the fairness and transparency of creditor payments to brokers, known as yield spread premiums. Several commenters and panelists stated that consumers are not aware of the payments creditors make to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available. Consumer groups have expressed particular concern about increased payments to brokers for delivering loans both with higher interest rates and prepayment penalties. Consumer groups suggested, variously, prohibiting creditors paying brokers yield spread premiums, imposing on brokers that accept yield spread premiums a fiduciary duty to consumers, imposing on creditors that pay yield spread premiums liability for broker misconduct, or including yield spread premiums in the points and fees test for HOEPA coverage. Several creditors and creditor trade associations advocated requiring brokers to disclose whether the broker represents the consumer's interests, and how and by whom the broker is to be compensated. Some of these commenters recommended requiring brokers to disclose their total compensation to the consumer and prohibiting creditors from paying brokers more than the disclosed amount.

Discussion

A yield spread premium is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender. This dollar amount is usually paid to the mortgage broker, though it may also be applied to other closing costs. (This proposal would restrict only amounts paid to and retained by the broker, however, and not amounts the broker is obligated to pass on to other settlement service providers.) The creditor's payment to the broker based on the interest rate is an alternative to the consumer's paying the broker directly from the consumer's preexisting resources or from the loan proceeds. Preexisting resources or loan proceeds may not be sufficient to cover the broker's total fee, or may appear to the consumer to be a more costly way to finance those costs if the consumer expects to prepay the loan in a relatively short period. Thus, consumers potentially benefit from having an option to pay brokers for their services indirectly by accepting a higher interest rate.

The Board shares concerns, however, that creditor payments to mortgage brokers are not transparent to consumers and are potentially unfair to them. Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Some brokers may refrain from acting on this incentive out of legal, business, or ethical considerations. Moreover, competition in the mortgage loan market may often limit brokers' ability to act on the incentive. The market often leaves brokers room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or brokers.

Large numbers of consumers are simply not aware the incentive exists. Many consumers do not know that creditors pay brokers based on the interest rate, and current legally required disclosures seem to have only limited effect.[62] Some consumers may not even know that creditors pay brokers: a common broker practice of charging a small part of its compensation directly to the consumer, to be paid from the consumer's existing resources or loan proceeds, may lead consumers to believe, incorrectly, that this amount is all the consumer will pay or the broker will receive. Consumers who do understand that the creditor pays the broker based on the interest rate may not fully understand the implications of the practice. They may not appreciate the full extent of the incentive this gives the broker to increase the rate because they do not

[62] This is true not only of state-mandated disclosures but also of the early federal disclosure currently in place under the Real Estate Settlement Procedures Act (RESPA), the good faith estimate of settlement costs (GFE). As the Department of Housing and Urban Development (HUD) has noted, the current GFE does not convey to consumers an adequate understanding of how mortgage brokers are paid. RESPA Simplification, 67 FR 49134, 49140–41, Jul. 29, 2002 (proposed rule under RESPA).

know the dollar amount of the creditor's payment.

Moreover, consumers often wrongly believe that brokers agree, or are required, to obtain the best interest rate available. Several commenters in connection with the 2006 hearings suggested that mortgage broker marketing cultivates an image of the broker as a ''trusted advisor'' to the consumer. Consumers who have this perception may rely heavily on a broker's advice, and there is some evidence that such reliance is common. In a 2003 survey of older borrowers who had obtained prime or subprime refinancings, seventy percent of respondents with broker-originated refinance loans reported that they had relied ''a lot'' on their brokers to find the best mortgage for them.[63]

If consumers believe that brokers protect consumers' interests by shopping for the lowest rates available, then consumers will be less likely to take steps to protect their own interests when dealing with a broker. For example, they may be less likely to shop rates across retail and wholesale channels simultaneously to assure themselves the broker is providing a competitive rate. They may also be less likely to shop and negotiate brokers' services, obligations, or compensation up-front, or at all. For example, they may be less likely to seek out brokers who will promise in writing to obtain the lowest rate available.

The Board's Proposal

The Board proposes to prohibit a creditor from paying a mortgage broker in connection with a covered transaction unless the payment does not exceed an amount the broker has agreed with the consumer in advance will be the broker's total compensation. The proposal would restrict only amounts the broker retains, not amounts the broker distributes to other settlement service providers. The agreement must also disclose that the consumer will pay the entire compensation even if all or part is paid directly by the creditor, and that a creditor's payment to a broker can influence the broker to offer the consumer loan terms or products that are not in the consumer's interest or are not the most favorable the consumer could obtain. The commentary would provide model language for each of these disclosures, which the Board anticipates testing with consumers. The broker and consumer must have entered into the agreement before the consumer had paid a fee to any person or submitted a written application to the broker, whichever occurred earlier.

The proposal is intended to limit the potential for unfairness, deception, and abuse in creditor payments to brokers in exchange for higher interest rates while preserving this option for consumers to finance their obligations to brokers. Conditioning such payments on a broker's advance commitment to the consumer to limit its compensation to a specified dollar amount may increase transparency and improve competition in the market for brokerage services. Improved competition could lower the price of brokerage services, improve the quality of those services, or both. When consumers are aware how much they will pay for a broker's services, they may be more likely to shop and negotiate among brokers based on broker fees, broker services, and other terms of broker contracts.

Disclosing that the consumer ultimately pays the broker's compensation would help ensure that the disclosure of a compensation figure was meaningful and not undermined by a consumer's perception that the creditor, not the consumer, shoulders the broker fee. Disclosing that the creditor's payment may influence the broker not to serve the best interests of the consumer would help ensure that consumers were on notice of the need to protect their own interests when dealing with a mortgage broker rather than assume that the broker would fully protect their interests.

The rule is intended to impose a fairly minimal compliance burden. A creditor would demonstrate compliance by obtaining a copy of a timely executed broker-consumer agreement and ensuring that it did not pay the broker more than the amount stated in the agreement, reduced by any amount paid directly by the consumer. The amount paid directly by the consumer, if any, would appear on the HUD–1 Settlement Statement prepared in accordance with the Real Estate Settlement Procedures Act.

The Board considered imposing a disclosure obligation directly on brokers. It does not appear, however, that a disclosure alone would provide consumers adequate protection. More protection is provided where creditors are prohibited from paying more than the amount disclosed.

Compensation amount. The proposal would require that the compensation be disclosed as a flat dollar amount. The proposal would not permit disclosing a range of fees or a percentage figure. The Board recognizes that disclosure in these or other forms has been common. The Board is concerned, however, that disclosure in a form other than a flat dollar amount, however, would not be meaningful to consumers.

Timing. The proposal would require that the broker-consumer agreement have been entered into before the consumer pays a fee to any person in connection with the transaction or submits an application. This is intended to ensure the consumer has not already become ''locked in'' to a relationship with the broker by paying a fee or submitting an application. The early timing requirement may also tend to limit the risk that a broker would price discriminate on the basis of the sophistication and market options of the borrower.

The Board recognizes that requiring a broker who seeks to be paid by the creditor to commit to its fee this early in its relationship with the consumer may lead brokers to price their services on the basis of the average cost of a transaction rather than separately for each transaction. Average cost pricing can potentially create some inefficiency. The Board believes, however, that this cost may be outweighed by the increased efficiency from improved transparency.

Loans covered. The proposed rule would apply to the prime market as well as the subprime market. The Board recognizes that injury to consumers in the prime market is likely more limited than injury in the subprime market because loans in the prime market have a much narrower range of interest rates, which limits the rents that can be extracted from consumers. The Board is concerned, however, that the lack of transparency discussed above may injure borrowers in the prime market, too, even if not to the same degree.

Originators covered. The proposal is limited to creditor payments to brokers. A broker would be defined as a person, other than a creditor's employee, who for monetary gain arranges, negotiates, or otherwise obtains an extension of credit for a consumer. See proposed § 226.36(c). A person who met this definition would be considered a mortgage broker even if the credit obligation was initially payable to the person, unless the person funded the transaction from its own resources, from deposits, or from a bona fide warehouse line of credit.

The Board is aware of concerns that a rule restricting, and encouraging disclosure of, lender payments to brokers but not lender payments to their

[63] Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated Loans,* Data Digest No. 83 (AARP Public Policy Inst., Washington, D.C.), Jan. 2003, at 3, available at *http://www.aarp.org/research/credit-debt/mortgages/experiences_of_older_refinance_mortgage_loan_borro.html.*

employees could create an ''uneven playing field'' between brokers and lenders. Creditors sometimes pay their employed loan officers on a basis similar to their payment of yield spread premiums to independent brokers. To the extent a loan originated through an employee exceeds the creditor's ''par'' rate, the creditor may realize a gain from selling the loan on the secondary market and it may share some of this gain with the employee. Such payments give employees an incentive to increase the interest rate.

The Board does not propose, however, to restrict creditor payments to their own employees. The Board is not aware of significant evidence that consumers perceive lenders' employees the way they often perceive independent brokers—as trusted advisors who shop for the best loan for a consumer among a wide variety of sources. Accordingly, it is not clear that a key premise of the proposal to restrict creditor payments to brokers—that consumers expect a broker has a legal or professional obligation to give disinterested advice and find the consumer the best loan available—holds true for creditor payments to their own employees. In addition, extending the proposal to creditor payments to their employees could present difficult practical problems. For example, a creditor may not know even as of consummation whether it will sell a particular loan in the secondary market. If the creditor is nonetheless certain to sell the loan, it may not know until near or at consummation what its gain will be or, therefore, how much it will pay its employee.

Compliance alternatives. The proposal would provide creditors two alternative ways to comply, one where the creditor complies with a state law that provides consumers equivalent protection, a second where a creditor can demonstrate that its payments to a mortgage broker are not determined by reference to the transaction's interest rate. The first safe harbor is for a creditor payment to a broker for a transaction in connection with a state statute or regulation that (a) expressly prohibits the broker from being compensated in a manner that would influence a broker to offer loan products or terms not in the consumer's interest or not the most favorable the consumer could obtain; and (b) requires that a mortgage broker provide consumers with a written agreement that includes a description of the mortgage broker's role in the transaction and the broker's relationship to the consumer, as defined by such statute or regulation. An example would be a state statute or regulation that imposed a fiduciary obligation on a mortgage broker not to puts its own interests ahead of the consumer's and required the broker to disclose this obligation in an agreement with the consumer.

The second alternative is for a creditor that can demonstrate that the compensation it pays to a mortgage broker in connection with a transaction is not determined, in whole or in part, by reference to the transaction's interest rate. For instance, if a creditor can show that it pays brokers the same flat fee for all transactions regardless of the interest rate, the creditor would not be subject to the restriction on payments to brokers under § 226.36(a)(1).

Requests for Comment

The Board seeks comment generally on the costs and benefits of the proposal, including the proposed alternatives means of compliance. The Board seeks specific comment on whether it would be appropriate to apply the proposed rule, or a similar rule, to lender payments to loan originators in their employ and, if so, how the rule would address practical difficulties such as those discussed above. Further, the Board seeks comment on whether the benefits of applying the proposed rule to the prime market would outweigh the costs, including potential unintended consequences. The Board seeks specific comment on whether the proposed rule should be limited to higher-priced mortgage loans as defined in proposed § 226.35(a).

The Board also seeks comment on the proposed condition that the broker-consumer agreement have been entered into before the consumer pays a fee to any person in connection with the transaction or submits an application. Would brokers have a reduced incentive to shop actively among potential sources of financing for the lowest possible rate? Would a broker potentially terminate its relationship with a consumer without obtaining a loan for the consumer because the consumer's particular needs would be more difficult to meet than the broker anticipated when it set its compensation? If these are concerns, would it be appropriate for the Board to provide a narrow allowance for renegotiation of the broker's compensation later in the application process? How should such a permission be crafted to ensure transparency and protect consumers from unfair practices such as ''bait and switch''?

The Proposed Rule's Relationship to Other Laws

The Board recognizes that HUD has issued policy statements regarding creditor payments to mortgage brokers under RESPA and guidance as to disclosure of such payments on the Good Faith Estimate and HUD–1 Settlement Statement. The Board is also aware that HUD has announced its intention to propose improved disclosures for broker compensation under RESPA in the near future. The Board intends that its proposal would complement any proposal by HUD and operate in combination with that proposal to meet the agencies' shared objectives of fair and transparent markets for mortgage loans and for mortgage brokerage services. The Board and HUD have discussed their mutual desire and intention to work together to achieve these objectives while minimizing any duplication between their regulations. Accordingly, the proposed restriction of creditor payments to mortgage brokers is intended to be consistent with HUD's existing guidance regarding creditor compensation to brokers under Section 8 of RESPA, 12 U.S.C. 2607.

The Board is also aware that many states regulate brokers and their compensation in various respects. Under TILA Section 111, the proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610. The Board seeks comment on the relationship of this proposal to state laws.

B. Coercion of Appraisers—§ 226.36(b)

The Board proposes to prohibit creditors and mortgage brokers from coercing appraisers to misrepresent the value of a consumer's principal dwelling. The Board also proposes to prohibit creditors from extending credit when creditors know or have reason to know, at or before loan consummation, that an appraiser has misstated a dwelling's value. The regulation would apply to all consumer credit transactions secured by a consumer's principal dwelling.

Discussion

Some responses to the Board's request for public comment urged the Board to address coercion of appraisers, even though the Board did not specifically request comment on that issue. For example, the National Association of Attorneys General and many consumer and community groups cited inflated appraisals as a problem in the home

mortgage market. A lender trade association suggested that the Board require appraisers to report instances of improper pressure and ban inflation of appraisals. Appraiser trade associations and several consumer and community groups urged the Board to prohibit coercion of appraisers as an unfair or deceptive act or practice. Also, testimony before Congress has cited data that suggests that appraisers frequently are subject to coercion.[64]

Pressuring an appraiser to overstate, or understate, the value of a consumer's dwelling distorts the lending process and harms consumers. If the appraisal is inflated on a home purchase loan, a consumer may pay more for the house than the consumer otherwise would have. Inflated appraisals also may lead consumers to think they have more equity in their homes than they really have, and consumers may borrow or make other financial decisions based on this incorrect information. For example, a consumer who purchases a home based on an inflated appraisal may overestimate her ability to refinance and may take on a riskier loan than she otherwise would have. Moreover, the consumer would not necessarily be aware that an appraisal had been inflated or appreciate the risk that appraisal inflation entailed. Understated appraisals, though perhaps less common, can cause consumers to be denied access to credit for which they were qualified.

Inflated appraisals of homes concentrated in a neighborhood may affect other appraisals, since appraisers factor the value of comparable properties into their property valuation. For the same reason, understated appraisals may affect appraisals of neighboring properties. Thus, inflated or understated appraisals can harm consumers other than those who are party to the transaction with the inflated appraisal. Moreover, these consumers are not in a position to know of the practice or avoid it.

State legislatures and enforcement agencies have addressed concerns about parties who exert undue influence over appraisers' property valuations.[65] Several states have banned coercion of appraisers or enacted general laws against mortgage fraud that may be used to combat appraiser coercion.[66] In 2006, forty-nine states and the District of Columbia (collectively, the Settling States) entered into a settlement agreement with ACC Capital Holdings Corporation and several of its subsidiaries, including Ameriquest Mortgage Company (collectively, the Ameriquest Parties). The Settling States alleged that the Ameriquest Parties had engaged in deceptive or misleading acts that resulted in the Ameriquest Parties' obtaining inflated appraisals of homes' value.[67] To settle the complaints, the Ameriquest Parties agreed to abide by policies designed to ensure appraiser independence and accurate valuations. Also, the Attorneys General of New York and Ohio recently have filed actions that allege, among other violations, the exertion of improper influence over appraisers.

The Board's Proposal

To address the harm from improper influencing of appraisers, the Board proposes to prohibit creditors and mortgage brokers and their affiliates from pressuring an appraiser to misrepresent a dwelling's value, for all closed-end consumer credit transactions secured by a consumer's principal dwelling. The proposed regulation defines the term ''appraiser'' as a person who engages in the business of providing, or offering to provide, assessments of the value of dwellings.

Further, the Board's proposed regulation prohibits a creditor from extending credit if the creditor knew or had reason to know that a broker had coerced an appraiser to misstate a dwelling's value, unless the creditor acted with reasonable diligence to determine that the appraisal was accurate. For example, an appraiser might notify a creditor that a mortgage broker had tried—and failed—to get the appraiser to inflate a dwelling's value. If, after reasonable, documented investigation, the creditor found that the appraiser had not misstated the dwelling's value, the creditor could extend credit based on the appraiser's valuation. The proposed commentary states that, alternatively, the creditor could extend credit based on another appraisal untainted by improper influence.

The commentary to the proposed regulation gives examples of acts that would violate the regulation: implying to an appraiser that retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling; failing to compensate an appraiser or to retain the appraiser in the future because the appraiser does not value a consumer's principal dwelling at or above a certain amount; and conditioning an appraiser's compensation on loan consummation. The commentary also lists examples of acts that would not violate the regulation: requesting that an appraiser consider additional information for, provide additional information about, or correct factual errors in a valuation; obtaining multiple appraisals of a dwelling (provided that the creditor or mortgage broker selects appraisals based on reliability rather than on the value stated); withholding compensation from an appraiser for breach of contract or substandard performance of services or terminating a relationship for violation of legal or ethical standards; and taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

A regulation under HOEPA that expressly prohibits creditors and brokers from pressuring appraisers to misstate or misrepresent the value of a consumer's dwelling would provide enforcement agencies in every state with a specific legal basis for an action alleging appraiser coercion. The Board requests comments on the potential costs and benefits of its proposed appraiser influence regulation. The Board seeks specific comment on the appropriateness of proposed examples of actions that would or would not violate the proposed regulation.

C. Servicing Abuses—§ 226.36(d)

The Board proposes to prohibit certain practices on the part of servicers of closed-end consumer credit transactions secured by a consumer's principal dwelling. Proposed § 226.36(d) would provide that no servicer shall: (1) Fail to credit a consumer's periodic payment as of the date received; (2) impose a late fee or delinquency charge where the only late fee or delinquency charge is due to a consumer's failure to include in a current payment a delinquency charge imposed on earlier payments; (3) fail to

[64] For example, on June 26, 2007, at a hearing of the U.S. Senate Committee on Banking, the President of the Appraisal Institute testified for several appraiser trade organizations about threats to appraiser independence. He cited a 2007 survey by the October Research Corporation that found that 90 percent of appraisers reported having been pressured to report higher property values, a percentage almost twice as high as reported in a 2003 survey. *Ending Mortgage Abuse: Safeguarding Homebuyers: Hearing before the Subcomm. on Hous., Transp., & Comm'y Dev. of the S. Comm. on Banking, Hous., and Urban Affairs* 4, 110th Cong. (2007) (statement of Alan Hummel, Chair, Government Relations Committee, Appraisal Institute).

[65] The federal financial institution regulatory agencies have issued regulations to the institutions they supervise that explain, among other things, how those institutions should promote appraiser independence. The Board's proposal is not intended to alter those regulations or any other federal or state statutes, regulations, or agency guidance related to appraisals.

[66] *See, e.g.*, Colo. Rev. Stat. § 6–1–717; Iowa Code § 543D.18A; Ohio Rev. Code Ann. §§ 1322.07(G), 1345.031(B)(10), 4763.12(E).

[67] *See, e.g., Iowa ex rel. Miller* v. *Ameriquest Mortgage Co.,* No. 05771 EQCE–053090 (Iowa D. Ct. 2006) (Pls. Pet. 5).

provide a current schedule of servicing fees and charges within a reasonable time of request; or (4) fail to provide an accurate payoff statement within a reasonable time of request.

Discussion

Although the Board did not solicit comment on whether certain mortgage servicer practices should be prohibited or restricted in its notices of the 2006 or 2007 hearings, some commenters raised the topic in that context. The issue has also been presented in recent congressional testimony. Consumer advocates have raised concerns that some servicers may be charging consumers unwarranted or excessive fees, such as late fees and other ''service'' fees, in the normal course of mortgage servicing, as well as in foreclosure scenarios. There is anecdotal evidence that significant numbers of consumers have complained about servicing practices, and instances of unfair practices have been cited in court cases.[68] In 2003, the FTC announced a $40 million settlement with a large mortgage servicer and its affiliates to address allegations of abusive behavior.[69] Consumer advocates have also raised concerns that consumers are sometimes unable to understand the basis upon which fees are charged, in part because disclosure and other forms of notice to consumers of servicer fees are limited.

The Board shares concerns about abusive servicing practices. Before securitization became commonplace, a lending institution would often act as both originator and collector—that is, it would service its own loans. Today, however, separate servicing companies play a key role: they are chiefly responsible for account maintenance activities, including collecting payments (and remitting amounts due to investors), handling interest rate adjustments, and managing delinquencies or foreclosures. Servicers also act as the primary point of contact for consumers. In exchange for performing these services, servicers generally receive a fixed per-loan or monthly fee, float income, and ancillary fees—including default charges—that the consumer must pay.

A potential consequence of the ''originate-to-distribute'' model discussed in part II.C. above is the misalignment of incentives between consumers, servicers, and investors. Servicers contract directly with investors, and consumers are not a party to the contract. The investor is principally concerned with maximizing returns on the mortgage loans. So long as returns are maximized, the investor may be indifferent to the fees the servicer charges the borrower. Consumers do not have the ability to shop for servicers and have no ability to change servicers (without refinancing). As a result, servicers do not compete in any direct sense for consumers. Thus, there may not be sufficient market pressure on servicers to ensure competitive practices.

As a result, as described above, substantial anecdotal evidence of servicer abuse exists. For example, servicers may not timely credit, or may misapply, payments, resulting in improper late fees. Even where the first late fee is properly assessed, servicers may apply future payments to the late fee first, making it appear future payments are delinquent even though they are, in fact, paid in full within the required time period, and permitting the servicer to charge additional late fees—a practice commonly referred to as ''pyramiding'' of late fees. The Board is also concerned about the transparency of servicer fees and charges, especially because consumers may have no notices of such charges prior to their assessment. Consumers may be faced with charges that are confusing, excessive, or cannot easily be linked to a particular service. In addition, servicers may fail to provide payoff statements in a timely fashion, thus impeding consumers from refinancing existing loans.

The Board's Proposal

The Board is proposing to restrict certain servicing practices and to provide more transparency in the servicing market. Proposed § 226.36(d) would prohibit four servicing practices that are likely to harm consumers. First, the proposal would prohibit a servicer from failing to credit a payment to a consumer's account as of the same date it is received. Second, the proposal would prohibit ''pyramiding'' of late fees, by prohibiting a servicer from imposing a late fee on a consumer for making an otherwise timely payment that would be the full amount currently due but for its failure to include a previously assessed late fee. Third, the proposal would prohibit a servicer from failing to provide to a consumer, within a reasonable time after receiving a request, a schedule of all specific fees and charges it imposes in connection with mortgage loans it services, including the dollar amount and an explanation of each fee and the circumstances under which it will be imposed. Fourth, the proposal would prohibit a servicer from failing to provide, within a reasonable time after receiving a request, an accurate statement of the amount currently required to pay the obligation it services in full, often referred to as a payoff statement. Under proposed § 226.36(d)(3), the term ''servicer'' and ''servicing'' are given the same meanings as provided in Regulation X, 24 CFR 3500.2.

As described in part V above, TILA Section 129(l)(2) authorizes protections against unfair practices by non-creditors and against unfair or deceptive practices outside of the origination process, when such practices are ''in connection with mortgage loans.'' 15 U.S.C. 1639(l)(2). The Board believes that unfair or deceptive servicing practices fall squarely within the purview of Section 129(l)(2) because servicing is an integral part of the life of a mortgage loan and, therefore, has a close and direct ''connection with mortgage loans.'' Accordingly, the Board bases its proposal to prohibit certain unfair or deceptive servicing practices on its authority under Section 129(l)(2), 15 U.S.C. 1639(l)(2).

Late Payments

The proposed rule prohibiting the failure to credit payments as of the date received would be substantially similar to the existing provision requiring prompt crediting of payment on open-end transactions in § 226.10. Accordingly, proposed § 226.36(d)(1)(i) would require a servicer to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or in the reporting of negative information to a consumer reporting agency except as provided in § 226.36(d)(2). As the proposed commentary would make clear, the proposal would not require that a servicer physically enter the payment on the date received, but would require only that it be credited *as of* the date received. Thus, a servicer that receives a payment on or before its due date and does not enter the payment on its books until after the due date does not violate the requirement as long as the entry does not result in the imposition of a late charge, interest, or

[68] *See, e.g., Islam* v. *Option One Mortgage Corp.,* 432 F. Supp. 2d 181 (D. Mass 2006); *In Re Coates,* 292 B.R. 894 (D. Ill. 2003); *In Re Gorshstein,* 285 B.R. 118 (S.D.N.Y. 2002); *In re Tate,* 253 B.R. 653 (2000); *Rawlings* v. *Dovenmuehle Mortgage Inc.,* 64 F. Supp. 2d 1156 (M.D. Ala. 1999); *Ronemus* v. *FTB Mortgage Servs.,* 201 B.R. 458 (1996).

[69] Consent Order, *United States* v. *Fairbanks Capital Corp.,* Civ. No. 03–12219-DPW (D. Mass Nov. 21, 2003, as modified Sept. 4, 2007). *See also Ocwen Federal Bank FSB,* Supervisory Agreement, OTS Docket No. 04592 (Apr. 19, 2004) (settlement resolving mortgage servicing issues).

other charge to the consumer. The Board seeks comment on whether (and if so, how) partial payments should be addressed in this provision.

Similar to § 226.10(b), proposed § 226.36(d)(2) would require a servicer that specifies payment requirements in writing, but that accepts a non-conforming payment, to credit the payment within five days of receipt. The proposed commentary is also similar to the commentary accompanying § 226.10(b); for example, it explains that the servicer may specify in writing reasonable requirements for making payments, such as setting a cut-off hour for payment to be received. The Board seeks comment on whether the commentary should include a safe harbor as to what constitutes a reasonable payment requirement, for example, a cut-off time of 5 p.m. for receipt of a mailed check.

Pyramiding Late Fees

The prohibition on pyramiding late fees parallels the existing prohibition in the ''credit practices rule,'' under section 5 of the FTC Act, 15 U.S.C. 45. *See, e.g.*, 12 CFR 227.15 (Board's Regulation AA). Proposed § 226.36(d)(1)(ii) would prohibit servicers from imposing any late fee or delinquency charge on the consumer in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period. The proposed commentary provides that the prohibition should be construed consistently with the credit practices rule. Servicers are currently subject to this rule, whether they are banks (Regulation AA), thrifts (12 CFR 535.4), or other kinds of institutions (16 CFR 444.4). Consumers may nevertheless benefit if the Board adopted the same requirement under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2). This would permit state attorneys general to enforce the rule uniformly, where currently they may be limited to enforcing the rule through state statutes that may vary. Accordingly, violations of the anti-pyramiding rule by servicers would provide state attorneys general an additional means of enforcement.

Schedule of Fees and Charges

The third proposed rule would require a servicer to provide to a consumer upon request a schedule of all specific fees and charges that may be imposed in connection with the servicing of the consumer's account, including a dollar amount and an explanation of each and the circumstances under which it may be imposed. The Board believes that making the fee schedule available to consumers upon request will bring transparency to the market and will make it more difficult for unscrupulous servicers to camouflage or inflate fees. Therefore, the proposal would require the servicer to provide, upon request, a fee schedule that is specific both as to the amount and reason for each charge, to prevent servicers from disguising fees by lumping them together or giving them generic names.

The proposed commentary would also explain that a dollar amount may be expressed as a flat fee or, if a flat fee is not feasible, as an hourly rate or percentage. Thus, if the services of a foreclosure attorney are required, the servicer might list the attorney's hourly rate because it would be difficult for a servicer to determine a flat dollar amount. However, it might not be difficult for a servicer to determine a flat delivery service fee. The Board believes that disclosure of a dollar figure for each fee will discourage abusive servicing practices by enhancing the consumer's understanding of servicing charges. The Board seeks comment on the effectiveness of this approach, and on any alternative methods to achieve the same objective.

Further, the proposed commentary would clarify that ''fees imposed'' by the servicer include third party fees or charges passed on by the servicer to the consumer. The Board recognizes that servicers may have difficulty identifying third party charges with complete certainty, because third party fees may vary depending on the circumstances (for example, fees may vary by geography). The Board seeks comment on whether the benefit of increasing the transparency of third party charges would outweigh the costs associated with a servicer's uncertainty as to such charges.

The proposed commentary would clarify that a servicer who receives a request for the schedule of fees may either mail the schedule to the consumer or direct the consumer to a specific Web site where the schedule is located. The Board believes that having the option to post the schedule on a Web site will greatly reduce the burden on servicers to provide schedules. However, the proposed commentary provides that any such Web site address reference must be specific enough to inform the consumer where the schedule is located, rather than solely referring to the servicer's home page.

Loan Payoff Statement

Proposed § 226.36(d)(1)(iv) would prohibit a servicer from failing to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the full amount required to pay the obligation in full as of a specified date, often referred to as a payoff statement. Servicers' delay in providing payoff statements has impeded consumers from refinancing existing loans or otherwise clearing title. Such delays increase transaction costs and may discourage consumers from pursuing a refinance opportunity. The proposed commentary states that under normal market conditions, three business days would be a reasonable time to provide the payoff statements; however, the commentary states that a reasonable time might be longer than three business days when servicers are experiencing an unusually high volume of refinancing requests.

Under this provision, the servicer would be required to respond to the request of a person acting on behalf of the consumer; this is to ensure that the creditor with whom the consumer is refinancing receives the payoff statement in a timely manner. It also ensures that others who act on the consumer's behalf, such as a non-profit homeownership counselor, can obtain a payoff statement for the consumer within a reasonable time.

D. Coverage—§ 226.36(e)

Proposed § 226.36 would apply new protections to mortgage loans generally, if primarily for a consumer purpose and secured by the consumer's principal dwelling, because the Board believes that the concerns addressed by proposed § 226.36 also apply to the prime market. However, the Board proposes to exclude HELOCs from coverage of § 226.36 because the risks to consumers addressed by the proposal may be lower in connection with HELOCs than with closed-end transactions. Most originators of HELOCs hold them in portfolio rather than sell them, which aligns these originators' interests in loan performance more closely with their borrowers' interests. Further, consumers with HELOCs can be protected in other ways besides regulation under HOEPA. Unlike closed-end transactions, HELOCs are concentrated in the banking and thrift industries, where the federal banking agencies can use their supervisory authority to protect

consumers.[70] Similarly, TILA and Regulation Z already contain a prompt crediting rule for HELOCs, 12 CFR 226.10, of the kind the Board is proposing in § 226.36(d).

The Board seeks comment on whether there is a need to apply any or all of the proposed prohibitions in § 226.36 to HELOCs. For example, one source reports that the proportion of HELOCs originated through mortgage brokers is quite small.[71] This may suggest that the risks of improper creditor payments to brokers or broker coercion of appraisers in connection with HELOCs is limited. Are mortgage brokers growing as a channel for HELOC origination such that regulation under §§ 226.36(a) through 226.36(c) is necessary? Do originators contract out HELOC servicing often enough to necessitate the proposed protections of § 226.36(d)? If coverage should be extended to HELOCs, the Board also solicits comment as to whether such coverage should be limited to specific types of HELOCs. For example, do purchase money HELOCs, which are often used in combination with first-lien closed-end loans to purchase a home, mirror the risks associated with first-lien loans?

IX. Other Potential Concerns

A. Other HOEPA Prohibitions

As discussed in part VII, the Board is proposing to extend to higher-priced mortgage loans two of the restrictions HOEPA currently applies only to HOEPA loans, concerning determinations of repayment ability and prepayment penalties. *See* TILA Section 129(c) and (h), 15 U.S.C. 1639(c) and (h). HOEPA also prohibits negative amortization, interest rate increases after default, balloon payments on loans with a term of less than five years, and prepaid payments. TILA Section 129(d)–(g), 15 U.S.C. 1639(d)–(g). In addition, the statute prohibits creditors from paying home improvement contractors directly unless the consumer consents in writing. TILA Section 129(j), 15 U.S.C. 1639(j). In 2002, the Board added to these limitations on HOEPA loans a regulatory prohibition on due-on-demand clauses and on refinancings by the same creditor (or assignee) within one year unless the refinancing is in the borrower's interest. 12 CFR 226.32(d)(8) and 226.34(a)(3).

The Board seeks comment on whether any of these restrictions should be applied to higher-priced mortgage loans. Is there evidence that any of these practices has caused consumers in the subprime market substantial injury or has the potential to do so? Would the benefits of applying the restriction to higher-priced mortgage loans outweigh the costs, considering both the subprime market and the part of the alt-A market that may be covered by the proposal?

Negative amortization has been a particular concern in recent years because of the rapid spread of nontraditional mortgages that permit consumers to defer for a time paying any principal and to pay less than the interest due. What are the costs and benefits for consumers of negative amortization in the part of the market that would be covered under the definition of higher-priced mortgage loans? Would proposed § 226.35(b)(1), which would generally prohibit a pattern or practice of extending higher-priced mortgage loans without regard to consumers' repayment ability—taking into account a fully-amortizing payment—adequately address concerns about negative amortization on such loans?

Historically, loans with balloon payments also have been of concern in the subprime market. What are the costs and benefits for consumers of balloon loans in the part of the market that would be covered under the definition of higher-priced mortgage loans? Should the Board prohibit balloon payments with such loans and, if so, should balloon payments be permitted on loans with terms of more than five years, as HOEPA now permits? Proposed § 226.35(b)(1) would provide creditors a safe harbor from the prohibition against a pattern or practice of lending without regard to repayment ability if the creditor has a reasonable basis to believe consumers will be able to make loan payments for at least seven years after consummation of the transaction. Would this safe harbor tend to encourage creditors to restrict balloon payments to the eighth year, or later? If so, would the proposal provide consumers adequate protections from balloon loans without a regulation specifically addressing them?

B. Steering

Consumer advocates and others have expressed concern that borrowers are sometimes steered into loans with prices higher than the borrowers' risk profiles warrant or terms and features not suitable to the borrower. Existing law also restricts steering. If a creditor steered borrowers to higher-rate loans or to certain loan products on the basis of borrowers' race, ethnicity, or other prohibited factors, the creditor would violate the Equal Credit Opportunity Act, 15 U.S.C. 1601 *et seq.*, and Regulation B, 12 CFR 202, as well as the Fair Housing Act, 42 U.S.C. 3601 *et seq.*

Moreover, two parts of this proposal would help to address steering regardless whether the steering had a racial basis or other prohibited basis. First, proposed § 226.36(a) would limit creditor payments to mortgage brokers to an amount the broker had agreed with the consumer in advance—before the broker could know what rate the consumer would qualify for—would be the broker's total compensation. This provision also would prohibit the payment unless the broker had given the consumer a written notice that a broker that receives payments from a creditor may have incentives not to provide the consumer the best or most suitable rates or terms. These restrictions are intended to reduce the incentive and ability of a mortgage broker to offer a consumer a higher rate simply so that the broker, without the consumer's knowledge, could receive a larger payment from the creditor. Second, proposed § 226.35(b)(1) would prohibit a creditor from engaging in a pattern or practice of extending higher-priced mortgage loans based on the collateral without regard to repayment ability. Thus, if a creditor steered borrowers into higher-priced mortgage loans that the borrower may not have the ability to repay—or accepted loans from brokers that had done so—the creditor would risk violating proposed § 226.35(b)(1).

X. Advertising

The Board proposes to amend the advertising rules for open-end home-equity plans under § 226.16, and for closed-end credit under § 226.24 to address advertisements for home-secured loans. For open-end home-equity plan advertisements, the two most significant changes relate to the clear and conspicuous standard and the advertisement of introductory terms. For advertisements for closed-end credit secured by a dwelling, the three most significant changes relate to strengthening the clear and conspicuous standard for advertising disclosures, regulating the disclosure of rates and payments in advertisements to ensure that low introductory or ''teaser'' rates or payments are not given undue emphasis, and prohibiting certain acts or practices in advertisements as provided under Section 129(l)(2) of TILA.

[70] *See, e.g.*, Interagency Credit Risk Management Guidance for Home Equity Lending, Fed. Reserve Bd. SR Letter 05–11 (May 16, 2005); Addendum to Credit Risk Management Guidance for Home Equity Lending, Fed. Reserve Bd. SR Letter 06–15 app. 3 (Nov. 26, 2006).

[71] Consumer Bankers Ass'n, *2006 Home Equity Loan Study* (June 30, 2006) (reporting that about 10 percent of HELOCs were originated through a broker channel recently).

A. Advertising Rules for Open-end Home-equity Plans—§ 226.16

Overview

The Board is proposing to amend the open-end home-equity plan advertising rules in § 226.16. The two most significant changes relate to the clear and conspicuous standard and the advertisement of introductory terms in home-equity plans. Each of these proposed changes is summarized below.

First, the Board is proposing to revise the clear and conspicuous standard for home-equity plan advertisements, consistent with the approach taken in the advertising rules for consumer leases under Regulation M. *See* 12 CFR 213.7(b). New commentary provisions would clarify how the clear and conspicuous standard applies to advertisements of home-equity plans with introductory rates or payments, and to Internet, television, and oral advertisements of home-equity plans. The proposal would also allow alternative disclosures for television and radio advertisements for home-equity plans by revising the Board's earlier proposal for open-end plans that are not home-secured to apply to home-equity plans as well. *See* 12 CFR 226.16(f) *and* 72 FR 32948, 33064 (June 14, 2007).

Second, the Board is proposing to amend the regulation and commentary to ensure that advertisements adequately disclose not only introductory plan terms, but also the rates and payments that will apply over the term of the loan. The proposed changes are modeled after proposed amendments to the advertising rules for open-end plans that are not home-secured. *See* 72 FR 32948, 33064 (June 14, 2007).

The Board is also proposing changes to implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires disclosure of the tax implications of certain home-equity plans. *See* Pub. L. No. 109–8, 119 Stat. 23. Other technical and conforming changes are also proposed.

The Board is not proposing to extend to home-equity plan advertisements the prohibitions it proposes to apply to advertisements for closed-end credit secured by a dwelling. As discussed below in connection with its proposed changes to § 226.24, the Board is proposing to prohibit certain acts or practices connected with advertisements for closed-end mortgage credit under TILA § 129(l)(2). *See* discussion of § 226.24(i) below. Based on its review of advertising copy and outreach efforts, the Board has not identified similar misleading acts or practices in advertisements for home-equity plans. The Board seeks comment, however, on whether it should extend any or all of the prohibitions contained in the proposed § 226.24(i) to home-equity plans, or whether there are other acts or practices associated with advertisements for home-equity plans that should be prohibited.

Current Statute and Regulation

TILA Section 147, implemented by the Board in § 226.16(d), governs advertisements of open-end home-equity plans secured by the consumer's principal dwelling. 15 U.S.C. 1665b. 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 they meet the definition of creditor. *See* comment 2(a)(2)–2. Under the statute, if an open-end credit advertisement sets forth, affirmatively or negatively, any of the specific terms of the plan, including any required periodic payment amount, then the advertisement must also clearly and conspicuously state: (1) Any loan fee the amount of which is determined as a percentage of the credit limit and an estimate of the aggregate amount of other fees for opening the account; (2) in any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate; (3) the highest annual percentage rate which may be imposed under the plan; and (4) any other information the Board may by regulation require.

The specific terms of an open-end plan that ''trigger'' additional disclosures, which are commonly known as ''triggering terms,'' are the payment terms of the plan, or finance charges and other charges required to be disclosed under §§ 226.6(a) and 226.6(b). If an advertisement for a home-equity plan states a triggering term, the regulation requires that the advertisement also state the terms required by the statute. *See* 12 CFR 226.16(d)(1); *see also* comments 16(d)–1, and 16(d)–2.

Discussion

Clear and conspicuous standard. The Board is proposing to add comments 16–4 to 16–7 to clarify how the clear and conspicuous standard applies to advertisements for home-equity plans.

Currently, comment 16–1 explains that advertisements for open-end credit are subject to a clear and conspicuous standard set out in § 226.5(a)(1). The Board is not prescribing specific rules regarding the format of advertisements. However, proposed comment 16–4 would elaborate on the requirement that certain disclosures about introductory rates or payments in advertisements for home-equity plans be prominent and in close proximity to the triggering terms in order to satisfy the clear and conspicuous standard when introductory rates or payments are advertised and the disclosure requirements of proposed § 226.16(d)(6) apply. The disclosures would be deemed to meet this requirement if they appear immediately next to or directly above or below the trigger terms, without any intervening text or graphical displays. Terms required to be disclosed with equal prominence to the introductory rate or payment would be deemed to meet this requirement if they appear in the same type size as the trigger terms. A more detailed discussion of the proposed requirements for introductory rates or payments is found below.

The equal prominence and close proximity requirements of proposed § 226.16(d)(6) would apply to all visual text advertisements. However, comment 16–4 states that electronic advertisements that disclose introductory rates or payments in a manner that complies with the Board's recently amended rule for electronic advertisements under § 226.16(c) would be deemed to satisfy the clear and conspicuous standard. *See* 72 FR 63462 (Nov. 9, 2007). Under the rule, if an electronic advertisement provides the required disclosures in a table or schedule, any statement of triggering terms elsewhere in the advertisement must clearly direct the consumer to the location of the table or schedule. For example, a triggering term in an advertisement on an Internet Web site may be accompanied by a link that directly takes the consumer to the additional information. *See* comment 16(c)(1)–2.

An electronic advertisement may require consumers to scroll down a page, or click a link, to access important rate or payment information under the current rule. For example, an electronic advertisement may state a low introductory payment and require the consumer to click a link to find out that the payment applies for only two years and the payments that will apply after that. Using links in this manner may permit Internet advertisements to continue to emphasize low, introductory ''teaser'' rates or payments, while de-emphasizing rates or payments that apply for the term of a plan, as sometimes occurs with the use of footnotes. However, the Board recognizes that electronic advertisements may be displayed on

devices with small screens, such as on Internet-enabled cellphones or personal digital assistants, that might necessitate scrolling in order to view additional information. The Board seeks comment on whether it should amend the rules for electronic advertisements for home-equity plans to require that all information about rates or payments that apply for the term of the plan be stated in close proximity to introductory rates or payments in a manner that does not require the consumer to click a link to access the information. The Board also solicits comment on the costs and practical limitations, if any, of imposing this close proximity requirement on electronic advertisements.

The Board is also proposing to interpret the clear and conspicuous standards for Internet, television, and oral advertisements of home-equity plans. Proposed comment 16–5 explains that disclosures in the context of visual text advertisements on the Internet must not be obscured by techniques such as graphical displays, shading, coloration, or other devices, and must comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). Proposed comment 16–6 likewise explains that textual disclosures in television advertisements must not be obscured by techniques such as graphical displays, shading, coloration, or other devices, must be displayed in a manner that allows the consumer to read the information, and must comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). Proposed comment 16–7 would explain that oral advertisements, such as by radio or television, must provide disclosures at a speed and volume sufficient for a consumer to hear and comprehend them. In this context, the word ''comprehend'' means that the disclosures must be intelligible to consumers, not that advertisers must ensure that consumers understand the meaning of the disclosures. The Board is also proposing to allow the use of a toll-free telephone number as an alternative to certain oral disclosures in television or radio advertisements.

226.16(d)(2)—Discounted and Premium Rates

If an advertisement for a variable-rate home-equity plan states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments, the advertisement must also state the period of time the initial rate will be in effect, and a reasonably current annual percentage rate that would have been in effect using the index and margin. *See* 12 CFR 226.16(d)(2). The Board proposes to revise this section to require that the triggered disclosures be stated with equal prominence and in close proximity to the statement of the initial APR. The Board believes that this will enhance consumers' understanding of the cost of credit for the home-equity plan being advertised.

Proposed comment 16(d)–6 would provide safe harbors for what constitutes a ''reasonably current index and margin'' as used in § 226.16(d)(2) as well as § 226.16(d)(6). Under the proposed comment, the time period during which an index and margin would be considered reasonably current would depend on the medium in which the advertisement was distributed. For direct mail advertisements, a reasonably current index and margin would be one that was in effect within 60 days before mailing. For advertisements in electronic form, a reasonably current index and margin would be one that was in effect within 30 days before the advertisement was sent to a consumer's e-mail address, or for advertisements made on an Internet Web site, when viewed by the public. For printed advertisements made available to the general public, a reasonably current index and margin would be one that was in effect within 30 days before printing.

226.16(d)(3)—Balloon Payment

If an advertisement for a home-equity plan contains a statement about any minimum periodic payment, the advertisement must also state, if applicable, that a balloon payment may result. *See* 12 CFR 226.16(d)(3). The Board proposes to revise this section to clarify that only statements about the amount of any minimum periodic payment trigger the required disclosure, and to require that the disclosure of a balloon payment be equally prominent and in close proximity to the statement of a minimum periodic payment. Consistent with comment 5b(d)(5)(ii)–3, the Board proposes to clarify that the disclosure is triggered when an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only minimum periodic payments are made, even if a balloon payment is uncertain or unlikely. Additionally, the Board proposes to clarify that a balloon payment results if paying the minimum periodic payments would not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

Current comment 16(d)–7 states that an advertisement for a plan where a balloon payment will occur when only minimum payments are made must also state the fact that a balloon payment will result (not merely that a balloon payment ''may'' result). The Board proposes to incorporate the language from comment 16(d)–7 into the text of § 226.16(d)(3) with technical revisions. The comment would be revised and renumbered as comment 16(d)–9. The required disclosures regarding balloon payments must be stated with equal prominence and in close proximity to the minimum periodic payment. The Board believes that this will enhance consumers' ability to notice and understand the potential financial impact of making only minimum payments.

226.16(d)(4)—Tax Implications

Section 1302 of the Bankruptcy Act amends TILA Section 147(b) to require additional disclosures for advertisements that are disseminated in paper form to the public or through the Internet, relating to an extension of credit secured by a consumer's principal dwelling that may exceed the fair market value of the dwelling. Such advertisements must 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. 1665b(b). The statute also requires a statement that the consumer should consult a tax adviser for further information on the deductibility of the interest.

The Bankruptcy Act also requires that disclosures be provided at the time of application in cases where the extension of credit may exceed the fair market value of the dwelling. *See* 15 U.S.C. 1637a(a)(13). The Board intends to implement the application disclosure portion of the Bankruptcy Act during its forthcoming review of closed-end and HELOC disclosures under TILA. However, the Board requested comment on the implementation of both the advertising and application disclosures under this provision of the Bankruptcy Act for open-end credit in its October 17, 2005, ANPR. 70 FR 60235, 60244 (Oct. 17, 2005). A majority of comments on this issue addressed only the application disclosure requirement, but some commenters specifically addressed the advertising disclosure requirement. One industry commenter suggested that the advertising disclosure requirement apply only in cases where the advertised product allows for the credit to exceed the fair market value of the dwelling. Other industry commenters suggested that the

requirement apply only to advertisements for products that are intended to exceed the fair market value of the dwelling.

The Board proposes to revise § 226.16(d)(4) and comment 16(d)–3 to implement TILA Section 147(b). The Board's proposal clarifies that the new requirements apply to advertisements for home-equity plans where the advertised extension of credit may, by its terms, exceed the fair market value of the dwelling. The Board seeks comment on whether the new requirements should only apply to advertisements that state or imply that the creditor provides extensions of credit greater than the fair market value of the dwelling.

226.16(d)(6)—Introductory Rates and Payments

The Board is proposing to add § 226.16(d)(6) to address the advertisement of introductory rates and payments in advertisements for home-equity plans. The proposed rule provides that if an advertisement for a home-equity plan states an introductory rate or payment, the advertisement must use the term ''introductory'' or ''intro'' in immediate proximity to each mention of the introductory rate or payment. The proposed rule also provides that such advertisements must disclose the following information in a clear and conspicuous manner with each listing of the introductory rate or payment: the period of time during which the introductory rate or introductory payment will apply; in the case of an introductory rate, any annual percentage rate that will apply under the plan; and, in the case of an introductory payment, the amount and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin to an assumed balance shall be disclosed based on a reasonably current index and margin. Although introductory rates are addressed, in part, by § 226.16(d)(2), which deals with the advertisement of discounted and premium rates, § 226.16(d)(6) is broader because it is not limited to initial rates, but applies to any advertised rate that applies for a limited period of time.

Proposed § 226.16(d)(6) is similar to the approach taken by the Board with regard to the advertisement of introductory rates for open-end (not home-secured) plans in the June 2007 proposal to amend the Regulation Z open-end advertising rules. *See* 72 FR 32948, 33064 (June 14, 2007). However, the June 2007 proposal would only apply to the advertisement of introductory rates, while this proposal would apply to the advertisement of both introductory rates and payments.

226.16(d)(6)(i)—Definitions

The Board proposes to define the terms ''introductory rate,'' ''introductory payment,'' and ''introductory period'' in § 226.16(d)(6)(i). In a variable-rate plan, the term ''introductory rate'' means any annual percentage rate applicable to a home-equity plan that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect based on the index and margin that will be used to make rate adjustments under the plan. The term ''introductory payment'' means, in the case of a variable-rate plan, the amount of any payment applicable to a home-equity plan for an introductory period that is not derived from the index and margin that will be used to determine the amount of any other payments under the plan and, given an assumed balance, is less than any other payment that will be in effect under the plan based on a reasonably current application of the index and margin that will be used to determine the amount of such payments. For a non-variable-rate plan, the term ''introductory payment'' means the amount of any payment applicable to a home-equity plan for an introductory period if that payment is less than the amount of any other payments that will be in effect under the plan given an assumed balance. The term ''introductory period'' means a period of time, less than the full term of the loan, that the introductory rate or payment may be applicable.

Proposed comment 16(d)–5.i clarifies how the concepts of introductory rates and introductory payments apply in the context of advertisements for variable-rate plans. Specifically, the proposed comment provides that if the advertised annual percentage rate or the advertised payment is based on the index and margin that will be used to make rate or payment adjustments over the term of the loan, then there is no introductory rate or introductory payment. On the other hand, if the advertised annual percentage rate, or the advertised payment, is not based on the index and margin that will be used to make rate or payment adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate or, given an assumed balance, a higher payment, then there is an introductory rate or introductory payment. The proposed revisions generally assume that a single index and margin will be used to make rate or payment adjustments under the plan. The Board solicits comment on whether and to what extent multiple indexes and margins are used in home-equity plans and whether additional or different rules are needed for such products.

Proposed comment 16(d)–5.v clarifies how the concept of introductory payments applies in the context of advertisements for non-variable-rate plans. Specifically, the proposed comment provides that if the advertised payment is calculated in the same way as other payments under the plan based on an assumed balance, the fact that the payment could increase solely if the consumer made an additional draw does not make the payment an introductory payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1000 if the consumer made an additional $10,000 draw, the payment is not an introductory payment.

226.16(d)(6)(ii)—Stating the Term ''Introductory''

Proposed § 226.16(d)(6)(ii) would require creditors to state either the term ''introductory'' or its commonly-understood abbreviation ''intro'' in immediate proximity to each listing of the introductory rate or payment in an advertisement for a home-equity plan. Proposed comment 16(d)–5.ii clarifies that placing the word ''introductory'' or ''intro'' within the same sentence as the introductory rate or introductory payment satisfies the immediately proximate standard.

226.16(d)(6)(iii)—Stating the Introductory Period and Post-Introductory Rate or Payments

Proposed § 226.16(d)(6)(iii) provides that if an advertisement states an introductory rate or introductory payment, it must also clearly and conspicuously disclose, with equal prominence and in close proximity to the introductory rate or payment, the following, as applicable: the period of time during which the introductory rate or introductory payment will apply; in the case of an introductory rate, any annual percentage rate that will apply under the plan; and, in the case of an introductory payment, the amount and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin to an assumed balance shall be disclosed based on a reasonably current index and margin.

Proposed comment 16(d)–5.iii provides safe harbors for satisfying the closely proximate or equally prominent

requirements of proposed § 226.16(d)(6)(iii). Specifically, the required disclosures will be deemed to be closely proximate to the introductory rate or payment if they are in the same paragraph as the introductory rate or payment. Information disclosed in a footnote will not be deemed to be closely proximate to the introductory rate or payment. Consumer testing of account-opening and other disclosures undertaken in conjunction with the Board's open-end Regulation Z proposal suggests that placing information in a footnote makes it much less likely that the consumer will notice it. The required disclosures will be deemed equally prominent with the introductory rate or payment if they are in the same type size as the introductory rate or payment.

Proposed comment 16(d)–5.iv clarifies that the requirement to disclose the amount and time periods of any payments that will apply under the plan may require the disclosure of several payment amounts, including any balloon payments. The comment provides an example of a home-equity plan with several payment amounts over the repayment period to illustrate the disclosure requirements. Proposed comment 16(d)–6, which is discussed above, would provide safe harbor definitions for the phrase ''reasonably current index and margin.''

226.16(d)(6)(iv)—Envelope Excluded

Proposed § 226.16(d)(6)(iv) provides that the requirements of § 226.16(d)(6)(iii) do not apply to envelopes, or to banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation provided electronically. In the Board's view, because banner advertisements and pop-up advertisements are used to direct consumers to more detailed advertisements, they are similar to envelopes in the direct mail context.

226.16(f)—Alternative Disclosures—Television or Radio Advertisements

The Board is proposing to expand § 226.16(f) to allow for alternative disclosures of the information required for home-equity plans under § 226.16(d)(1), where applicable, consistent with its proposal for credit cards and other open-end plans. *See* proposed § 226.16(f) *and* 72 FR 32948, 33064 (June 14, 2007).

The Board's proposed revision follows the general format of the Board's earlier proposal for alternative disclosures for oral television and radio advertisements. If a triggering term is stated in the advertisement, one option would be to state each of the disclosures required by current §§ 226.16(b)(1) and (d)(1) at a speed and volume sufficient for a consumer to hear and comprehend them. Another option would be for the advertisement to state orally the APR applicable to the home-equity plan, and the fact that the rate may be increased after consummation, and provide a toll-free telephone number that the consumer may call to receive more information. Given the space and time constraints on television and radio advertisements, the required disclosures may go unnoticed by consumers or be difficult for them to retain. Thus, providing an alternative means of disclosure may be more effective in many cases given the nature of the media.

This approach is also similar to the approach taken in the advertising rules for consumer leases under Regulation M, which also allows the use of toll-free numbers in television and radio advertisements. *See* 12 CFR 213.7(f)(1)(ii).

B. Advertising Rules for Closed-end Credit—§ 226.24

Overview

The Board is proposing to amend the closed-end credit advertising rules in § 226.24 to address advertisements for home-secured loans. The three most significant changes relate to strengthening the clear and conspicuous standard for advertising disclosures, regulating the disclosure of rates and payments in advertisements to ensure that low introductory or ''teaser'' rates or payments are not given undue emphasis, and prohibiting certain acts or practices in advertisements as provided under Section 129(l)(2) of TILA, 15 U.S.C. 1639(l)(2). Each of these proposed changes is summarized below.

First, the Board is proposing to add a provision setting forth the clear and conspicuous standard for all closed-end advertisements and a number of new commentary provisions applicable to advertisements for home-secured loans. The regulation would be revised to include a clear and conspicuous standard for advertising disclosures, consistent with the approach taken in the advertising rules for Regulation M. *See* 12 CFR 213.7(b). New commentary provisions would be added to clarify how the clear and conspicuous standard applies to rates or payments in advertisements for home-secured loans, and to Internet, television, and oral advertisements of home-secured loans. The proposal would also add a provision to allow alternative disclosures for television and radio advertisements that is modeled after a proposed revision to the advertising rules for open-end (not home-secured) plans. *See* 72 FR 32948, 33064 (June 14, 2007).

Second, the Board is proposing to amend the regulation and commentary to address the advertisement of rates and payments for home-secured loans. The proposed revisions are designed to ensure that advertisements adequately disclose all rates or payments that will apply over the term of the loan and the time periods for which those rates or payments will apply. Many advertisements for home-secured loans place undue emphasis on low, introductory ''teaser'' rates or payments that will apply for a limited period of time. Such advertisements do not give consumers accurate or balanced information about the costs or terms of the products offered.

The proposed revisions would also prohibit advertisements from disclosing an interest rate lower than the rate at which interest is accruing. Instead, the only rates that could be included in advertisements for home-secured loans are the APR and one or more simple annual rates of interest. Many advertisements for home-secured loans promote very low rates that do not appear to be the rates at which interest is accruing. The advertisement of interest rates lower than the rate at which interest is accruing is likely confusing for consumers. Taken together, the Board believes that the proposed changes regarding the disclosure of rates and payments in advertisements for home-secured loans will enhance the accuracy of advertising disclosures and benefit consumers.

Third, pursuant to TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), the Board is proposing to prohibit seven specific acts or practices in connection with advertisements for home-secured loans that the Board finds to be unfair, deceptive, associated with abusive lending practices, or otherwise not in the interest of the borrower.

Bankruptcy Act changes. The Board is also proposing several changes to clarify certain provisions of the closed-end advertising rules, including the scope of the certain triggering terms, and to implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requiring disclosure of the tax implications of home-secured loans. *See* Pub. L. No. 109–8, 119 Stat. 23. Technical and conforming changes to the closed-end advertising rules are also proposed.

Outreach. The Board's staff conducted extensive research and outreach in connection with developing the

proposed revisions to the closed-end advertising rules. Board staff collected and reviewed numerous examples of advertising copy for home-secured loans. Board staff also consulted with representatives of consumer and community groups and Federal Trade Commission staff to identify areas where the advertising disclosures could be improved, as well as to identify acts or practices connected with advertisements for home-secured loans that should be prohibited. This research and outreach indicated that many advertisements prominently disclose terms that apply to home-secured loans for a limited period of time, such as low introductory ''teaser'' rates or payments, while disclosing with much less prominence, often in a footnote, the rates or payments that apply over the full term of the loan. Board staff also identified through this research and outreach effort particular advertising acts or practices that can mislead consumers.

Current Statute and Regulation

TILA Section 144, implemented by the Board in § 226.24, governs advertisements of credit other than open-end plans. 15 U.S.C. 1664. TILA Section 144 thus applies to advertisements of closed-end credit, including advertisements for closed-end credit secured by a dwelling (also referred to as ''home-secured loans''). The statute applies to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising closed-end credit, whether or not such person meets the definition of creditor. *See* comment 2(a)(2)–2. Under the statute, if an advertisement states the rate of a finance charge, the advertisement must state the rate of that charge as an APR. In addition, closed-end credit advertisements that contain certain terms must also include additional disclosures. The specific terms of closed-end credit that ''trigger'' additional disclosures, which are commonly known as ''triggering terms,'' are (1) the amount of the downpayment, if any, (2) the amount of any installment payment, (3) the dollar amount of any finance charge, and (4) the number of installments or the period of repayment. If an advertisement for closed-end credit states a triggering term, then the advertisement must also state any downpayment, the terms of repayment, and the rate of the finance charged expressed as an APR. *See* 12 CFR 226.24(b)–(c); *see also* comments 24(b)–(c) (as redesignated to proposed §§ 226.24(c)–(d) and comments 24(c)–(d)).

TILA Section 105(a) authorizes the Board to adopt regulations to ensure meaningful disclosure of credit terms so that consumers will be able to compare available credit terms and avoid the uninformed use of credit. 15 U.S.C. 1604(a). TILA Section 122 authorizes the Board to require that information, including the information required under Section 144, be disclosed in a clear and conspicuous manner. 15 U.S.C. 1632. TILA Section 129(l)(2) authorizes the Board to prohibit acts or practices in connection with mortgage loans that the Board finds to be unfair or deceptive. TILA Section 129(l)(2) also authorizes the Board to prohibit acts or practices in connection with the refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower. 15 U.S.C. 1639(l)(2).

226.24(b)—Clear and Conspicuous Standard

The Board is proposing to add a clear and conspicuous standard in § 226.24(b) that would apply to all closed-end advertising. This provision would supplement, rather than replace, the clear and conspicuous standard that applies to all closed-end credit disclosures under Subpart C of Regulation Z and that requires all disclosures be in a reasonably understandable form. *See* 12 CFR 226.17(a)(1); comment 17(a)(1)–1. The new provision provides a framework for clarifying how the clear and conspicuous standard applies to advertisements that are not in writing or in a form that the consumer may keep, or that emphasize introductory rates or payments.

Currently, comment 24–1 explains that advertisements for closed-end credit are subject to a clear and conspicuous standard based on § 226.17(a)(1). The existing comment would be renumbered as comment 24(b)–1 and revised to reference the proposed format requirements for advertisements of rates or payments for home-secured loans. The Board is not prescribing specific rules regarding the format of advertising disclosures generally. However, proposed comment 24(b)–2 would elaborate on the requirement that certain disclosures about rates or payments in advertisements for home-secured loans be prominent and in close proximity to other information about rates or payments in the advertisement in order to satisfy the clear and conspicuous standard and the disclosure requirements of proposed § 226.24(f). Terms required to be disclosed in close proximity to other rate or payment information would be deemed to meet this requirement if they appear immediately next to or directly above or below the trigger terms, without any intervening text or graphical displays. Terms required to be disclosed with equal prominence to other rate or payment information would be deemed to meet this requirement if they appear in the same type size as other rates or payments. A more detailed discussion of the proposed requirements for disclosing rates or payments is found below.

The equal prominence and close proximity requirements of proposed § 226.24(f) would apply to all visual text advertisements. However, comment 24(b)–2 states that electronic advertisements that disclose rates or payments in a manner that complies with the Board's recently amended rule for electronic advertisements under current § 226.24(d) would be deemed to satisfy the clear and conspicuous standard. *See* 72 FR 63462 (Nov. 9, 2007). Under the rule, if an electronic advertisement provides the required disclosures in a table or schedule, any statement of triggering terms elsewhere in the advertisement must clearly direct the consumer to the location of the table or schedule. For example, a triggering term in an advertisement on an Internet Web site may be accompanied by a link that directly takes the consumer to the additional information. *See* comment 24(d)–4.

The Board recognizes that electronic advertisements may be displayed on devices with small screens that might necessitate scrolling to view additional information. The Board seeks comment, however, on whether it should amend the rules for electronic advertisements for home-secured loans to require that all information about rates or payments that apply for the term of the loan be stated in close proximity to other rates or payments in a manner that does not require the consumer to click a link to access the information. The Board also solicits comment on the costs and practical limitations, if any, of imposing this close proximity requirement on electronic advertisements.

The Board is also proposing to interpret the clear and conspicuous standards for Internet, television, and oral advertisements of home-secured loans. Proposed comment 24(b)–3 explains that disclosures in the context of visual text advertisements on the Internet must not be obscured by techniques such as graphical displays, shading, coloration, or other devices, and must comply with all other requirements for clear and conspicuous

disclosures under § 226.24. Proposed comment 24(b)–4 likewise explains that visual text advertisements on television must not be obscured by techniques such as graphical displays, shading, coloration, or other devices, must be displayed in a manner that allows a consumer to read the information required to be disclosed, and must comply with all other requirements for clear and conspicuous disclosures under § 226.24. Proposed comment 24(b)–5 would explain that oral advertisements, such as by radio or television, must provide the disclosures at a speed and volume sufficient for a consumer to hear and comprehend them. In this context, the word ''comprehend'' means that the disclosures be intelligible to consumers, not that advertisers must ensure that consumers understand the meaning of all of the disclosures. Proposed § 226.24(g) provides an alternative method of disclosure for television or radio advertisements when trigger terms are stated orally and is discussed more fully below.

226.24(c)—Advertisement of Rate of Finance Charge

Disclosure of simple annual rate or periodic rate. If an advertisement states a rate of finance charge, it shall state the rate as an APR. *See* 12 CFR 226.24(b) (as redesignated to proposed § 226.24(c)). An advertisement may also state, in conjunction with and not more conspicuously than the APR, a simple annual rate or periodic rate that is applied to an unpaid balance.

The Board proposes to renumber § 226.24(b) as § 226.24(c), and revise it. The revised rule would provide that advertisements for home-secured loans shall not state any rate other than an APR, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the APR. Advertisement of a periodic rate, other than the simple annual rate, or any other rates would no longer be permitted in connection with home-secured loans.

Comment 24(b)–2 would be renumbered as comment 24(c)–2 and revised to clarify that a simple annual rate or periodic rate is the rate at which interest is accruing. A rate lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate, is not a simple annual rate or periodic rate. The example in renumbered comment 24(c)–2 also would be revised to reference proposed § 226.24(f), which contains requirements regarding the disclosure of rates and payments in advertisements for home-secured loans.

Buydowns. Comment 24(b)–3, which addresses ''buydowns,'' would be renumbered as comment 24(c)–3 and revised. A buydown is where a seller or creditor offers a reduced interest rate and reduced payments to a consumer for a limited period of time. Comment 24(c)–3 allows the seller or creditor, in the case of a buydown, to advertise the reduced simple interest rate, the limited term to which the reduced rate applies, and the simple interest rate applicable to the balance of the term. The advertisement may show the effect of the buydown agreement on the payment schedule for the buydown period. The Board proposes to revise the comment to explain that additional disclosures would be required when an advertisement includes information showing the effect of the buydown agreement on the payment schedule. Such advertisements would have to provide the disclosures required by current § 226.24(c)(2) because showing the effect of the buydown agreement on the payment schedule is a statement about the amount of any payment, and thus is a triggering term. *See* 12 CFR 226.24(c)(1)(iii). In these circumstances, the additional disclosures are necessary for consumers to understand the costs of the loan and the terms of repayment. Consistent with these changes, the examples of statements about buydowns that an advertisement may make without triggering additional disclosures would be removed.

Effective rates. The Board is proposing to delete current comment 24(b)–4. The current comment allows the advertisement of three rates: the APR; the rate at which interest is accruing; and an interest rate lower than the rate at which interest is accruing, which may be referred to as an effective rate, payment rate, or qualifying rate. The comment also contains an example of how to disclose the three rates.

The Board is proposing to delete this comment for the reasons stated below. First, the disclosure of three rates is unnecessarily confusing for consumers and the disclosure of an interest rate lower than the rate at which interest is accruing does not provide meaningful information to consumers about the cost of credit. Second, when the effective rates comment was adopted in 1982, the Board noted that the comment was designed ''to address the advertisement of special financing involving 'effective rates,' 'payment rates,' or 'qualifying rates.''' *See* 47 FR 41338, 41342 (Sept. 20, 1982). At that time, when interest rates were quite high, these terms were used in connection with graduated-payment mortgages. Today, however, some advertisers appear to rely on this comment when advertising rates for a variety of home-secured loans, such as negative amortization loans and option ARMs. In these circumstances, the advertisement of rates lower than the rate at which interest is accruing for these products is not helpful to consumers, particularly consumers who may not fully understand how these non-traditional home-secured loans work.

Discounted variable-rate transactions. Comment 24(b)–5 would be renumbered as comment 24(c)–4 and revised to explain that an advertisement for a discounted variable-rate transaction which advertises a reduced or discounted simple annual rate must show with equal prominence and in close proximity to that rate, the limited term to which the simple annual rate applies and the annual percentage rate that will apply after the term of the initial rate expires.

The comment would also be revised to explain that additional disclosures would be required when an advertisement includes information showing the effect of the discount on the payment schedule. Such advertisements would have to provide the disclosures required by current § 226.24(c)(2). Showing the effect of the discount on the payment schedule is a statement about the number of payments or the period of repayment, and thus is a triggering term. *See* 12 CFR 226.24(c)(1)(ii). In these circumstances, the additional disclosures are necessary for consumers to understand the costs of the loan and the terms of repayment. Consistent with these changes, the examples of statements about discounted variable-rate transactions that an advertisement may make without triggering additional disclosures would be removed.

226.24(d)—Advertisement of Terms That Require Additional Disclosures

Required disclosures. The Board proposes to renumber § 226.24(c) as § 226.24(d) and revise it. The proposed rule would clarify the meaning of the ''terms of repayment'' required to be disclosed. Specifically, the terms of repayment must reflect ''the repayment obligations over the full term of the loan, including any balloon payment,'' not just the repayment terms that will apply for a limited period of time. This proposed revision is consistent with other proposed changes and is designed to ensure that advertisements for closed-end credit, especially home-secured loans, adequately disclose the terms that

will apply over the full term of the loan, not just for a limited period of time.

Consistent with these proposed changes, comment 24(c)(2)–2 would be renumbered as comment 24(d)(2)–2 and revised. Commentary regarding advertisement of loans that have a graduated-payment feature would be removed from comment 24(d)(2)–2.

In advertisements for home-secured loans where payments may vary because of the inclusion of mortgage insurance premiums, the comment would explain that the advertisement may state the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.

In advertisements for home-secured loans with one series of low monthly payments followed by another series of higher monthly payments, the comment would explain that the advertisement may state the number and time period of each series of payments and the amounts of each of those payments. However, the amount of the series of higher payments would have to be based on the assumption that the consumer makes the lower series of payments for the maximum allowable period of time. For example, if a consumer has the option of making interest-only payments for two years and an advertisement states the amount of the interest-only payment, the advertisement must state the amount of the series of higher payments based on the assumption that the consumer makes the interest-only payments for the full two years. The Board believes that without these disclosures consumers may not fully understand the cost of the loan or the payment terms that may result once the higher payments take effect.

The proposed revisions to renumbered comment 24(d)(2)–2 would apply to all closed-end advertisements. The Board believes that the terms of repayment for any closed-end credit product should be disclosed for the full term of the loan, not just for a limited period of time. The Board also does not believe that this proposed change will significantly impact advertising practices for closed-end credit products such as auto loans and installment loans that ordinarily have shorter terms than home-secured loans.

New comment 24(d)(2)–3 would be added to address the disclosure of balloon payments as part of the repayment terms. The proposed comment notes that in some transactions, a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement. A balloon payment results if paying the minimum payments does not fully amortize the outstanding balance by a specified date or time, usually the end of the term of the loan, and the consumer must repay the entire outstanding balance at such time. The proposed comment explains that if a balloon payment will occur if the consumer only makes the minimum payments specified in an advertisement, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such minimum payments. The Board believes that disclosure of the balloon payment in advertisements that promote such minimum payments is necessary to inform consumers about the repayment terms that will apply over the full term of the loan.

Current comments 24(c)(2)–3 and 24(c)(2)–4 would be renumbered as comments 24(d)(2)–4 and 24(d)(2)–5 without substantive change.

226.24(e)—Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

The Board is proposing to renumber § 226.24(d) as § 226.24(e) and make technical changes to reflect the renumbering of certain sections of the regulation and commentary.

226.24(f)—Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling

The Board is proposing to add a new subsection (f) to § 226.24 to address the disclosure of rates and payments in advertisements for home-secured loans. The primary purpose of these provisions is to ensure that advertisements do not place undue emphasis on low introductory ''teaser'' rates or payments, but adequately disclose the rates and payments that will apply over the term of the loan. The specific provisions of proposed subsection (f) are discussed below.

226.24(f)(1)—Scope

Proposed § 226.24(f)(1) provides that the new section applies to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications. The Board does not believe it is feasible to apply the requirements of this section, notably the close proximity and prominence requirements, to oral advertisements. However, the Board requests comment on whether these or different standards should be applied to oral advertisements for home-secured loans.

226.24(f)(2)—Disclosure of Rates

Proposed § 226.24(f)(2) addresses the disclosure of rates. Under the proposed rule, if an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement must disclose the following information in a clear and conspicuous manner: (a) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by an index and margin must be disclosed based on a reasonably current index and margin; (b) the period of time during which each simple annual rate of interest will apply; and (c) the annual percentage rate for the loan. If the rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.17(c) and 226.22.

Proposed comment 24(f)–4 would specifically address how this requirement applies in the context of advertisements for variable-rate transactions. For such transactions, if the simple annual rate that applies at consummation is based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, then there is only one simple annual rate and the requirements of § 226.24(f)(2) do not apply. If, however, the simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, then there is more than one simple annual rate and the requirements of § 226.24(f)(2) apply. The proposed revisions generally assume that a single index and margin will be used to make rate or payment adjustments under the loan. The Board solicits comment on whether and to what extent multiple indexes and margins are used in home-secured loans and whether additional or different rules are needed for such products.

Finally, the proposed rule establishes a clear and conspicuous standard for the disclosure of rates in advertisements for home-secured loans. Under this standard, the information required to be disclosed by § 226.24(f)(2) must be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures, except that the annual percentage rate may be disclosed with greater prominence than the other information.

Proposed comment 24(f)–1 would provide safe harbors for compliance with the equal prominence and close proximity standards. Proposed comment 24(f)–2 provides a cross-reference to comment 24(b)–2, which provides further guidance on the clear and conspicuous standard in this context.

226.24(f)(3)—Disclosure of Payments

Proposed § 226.24(f)(3) addresses the disclosure of payments. Under the proposed rule, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement must disclose the following information in a clear and conspicuous manner: (a) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on application of an index and margin must be disclosed based on a reasonably current index and margin; (b) the period of time during which each payment will apply; and (c) in an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater. These requirements are in addition to the disclosure requirements of current § 226.24(c).

Proposed comment 24(f)(3)–2 would specifically address how this requirement applies in the context of advertisements for variable-rate transactions. For such transactions, if the payment that applies at consummation is based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, then there is only one payment that must be disclosed and the requirements of § 226.24(f)(3) do not apply. If, however, the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, then there is more than one payment that must be disclosed and the requirements of § 226.24(f)(3) apply.

The proposed rule establishes a clear and conspicuous standard for the disclosure of payments in advertisements for home-secured loans. Under this standard, the information required to be disclosed under § 226.24(f)(3) regarding the amounts and time periods of payments must be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures. The information required to be disclosed under § 226.24(f)(3) regarding the fact that taxes and insurance premiums are not included in the payment must be prominently disclosed and in close proximity to the advertised payments. The Board believes that requiring the disclosure about taxes and insurance premiums to be equally prominent could distract consumers from the key payment and time period information. As noted above, proposed comment 24(f)–1 would provide safe harbors for compliance with the equal prominence and close proximity standards. Proposed comment 24(f)–2 provides a cross-reference to the comment 24(b)–2, which provides further guidance regarding the application of the clear and conspicuous standard in this context.

Proposed comment 24(f)–3 clarifies how the rules on disclosures of rates and payments in advertisements apply to the use of comparisons in advertisements. This comment covers both rate and payment comparisons, but in practice, comparisons in advertisements usually focus on payments.

Proposed comment 24(f)(3)–1 clarifies that the requirement to disclose the amounts and time periods of all payments that will apply over the term of the loan may require the disclosure of several payment amounts, including any balloon payment. The comment provides an illustrative example.

Proposed comment 24(f)–5 would provide safe harbors for what constitutes a ''reasonably current index and margin'' as used in § 226.24(f). Under the proposed comment, the time period during which an index and margin would be considered reasonably current would depend on the medium in which the advertisement was distributed. For direct mail advertisements, a reasonably current index and margin would be one that was in effect within 60 days before mailing. For advertisements in electronic form, a reasonably current index and margin would be one that was in effect within 30 days before the advertisement was sent to a consumer's e-mail address, or for advertisements made on an Internet Web site, when viewed by the public. For printed advertisements made available to the general public, a reasonably current index and margin would be one that was in effect within 30 days before printing.

226.24(f)(4)—Envelope Excluded

Proposed § 226.24(f)(4) provides that the requirements of §§ 226.24(f)(2) and (3) do not apply to envelopes or to banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation provided electronically. In the Board's view, banner advertisements and pop-up advertisements are similar to envelopes in the direct mail context.

226.24(g)—Alternative Disclosures—Television or Radio Advertisements

The Board is proposing to add a new § 226.24(g) to allow alternative disclosures to be provided in oral television and radio advertisements pursuant to its authority under TILA §§ 105(a), 122, and 144. One option would be to state each of the disclosures required by current § 226.24(c)(2) at a speed and volume sufficient for a consumer to hear and comprehend them if a triggering term is stated in the advertisement. Another option would be for the advertisement to state orally the APR applicable to the loan, and the fact that the rate may be increased after consummation, if applicable, at a speed and volume sufficient for a consumer to hear and comprehend them. However, instead of orally disclosing the required information about the amount or percentage of the downpayment and the terms of repayment, the advertisement could provide a toll-free telephone number that the consumer may call to receive more information. Given the space and time constraints on television and radio advertisements, the required disclosures may go unnoticed by consumers or be difficult for them to retain. Thus, providing an alternative means of disclosure may be more effective in many cases given the nature of television and radio media.

This approach is consistent with the approach taken in the proposed revisions to the advertising rules for open-end plans (other than home-secured plans). *See* 72 FR 32948, 33064 (June 14, 2007). This approach is also similar, but not identical, to the approach taken in the advertising rules under Regulation M. *See* 12 CFR 213.7(f). Section 213.7(f)(1)(ii) of Regulation M 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 has not proposed this option because it may not provide sufficient, readily-accessible information to consumers who are shopping for a home-secured loan and because advertisers, particularly those advertising on a regional or national scale, are not likely to use this option.

226.24(h)—Tax Implications

Section 1302 of the Bankruptcy Act amends TILA Section 144(e) to address

advertisements that are disseminated in paper form to the public or through the Internet, as opposed to by radio or television, and that relate to an extension of credit secured by a consumer's principal dwelling that may exceed the fair market value of the dwelling. Such advertisements must 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. 1664(e). For such 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 Bankruptcy Act also requires that disclosures be provided at the time of application in cases where the extension of credit may exceed the fair market value of the dwelling. *See* 15 U.S.C. 1638(a)(15). The Board intends to implement the application disclosure portion of the Bankruptcy Act during its forthcoming review of closed-end and HELOC disclosures under TILA. However, the Board requested comment on the implementation of both the advertising and application disclosures under this provision of the Bankruptcy Act for open-end credit in its October 17, 2005, ANPR. 70 FR 60235, 60244 (Oct. 17, 2005). A majority of comments on this issue addressed only the application disclosure requirement, but some commenters specifically addressed the advertising disclosure requirement. One industry commenter suggested that the advertising disclosure requirement apply only in cases where the advertised product allows for the credit to exceed the fair market value of the dwelling. Other industry commenters suggested that the requirement apply only to advertisements for products that are intended to exceed the fair market value of the dwelling.

The Board proposes to add § 226.24(h) and comment 24(h)–1 to implement TILA Section 144(e). The Board's proposal clarifies that the new requirements apply to advertisements for home-secured loans where the advertised extension of credit may, by its terms, exceed the fair market value of the dwelling. The Board seeks comment on whether the new requirements should only apply to advertisements that state or imply that the creditor provides extensions of credit greater than the fair market value of the dwelling.

226.24(i)—Prohibited Acts or Practices in Mortgage Advertisements

Section 129(l)(2) of TILA gives the Board the authority to prohibit acts or practices in connection with mortgage loans that it finds to be unfair or deceptive. Section 129(l)(2) of TILA also gives the Board the authority to prohibit acts or practices in connection with the refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower. 15 U.S.C. 1639(l)(2). Through an extensive review of advertising copy and other outreach efforts described above, Board staff identified a number of acts or practices connected with mortgage and mortgage refinancing advertising that appear to be inconsistent with the standards set forth in Section 129(l)(2) of TILA. Accordingly, the Board is proposing to add § 226.24(i) to prohibit seven acts or practices connected with advertisements of home-secured loans. The Board solicits comment on the appropriateness of the seven proposed prohibitions and whether any additional acts or practices should be prohibited by the regulation.

226.24(i)(1)—Misleading Advertising for ''Fixed'' Rates, Payments or Loans

Advertisements for home-secured loans often refer to a rate or payment, or to the credit transaction, as ''fixed.'' Such a reference is appropriate when used to denote a fixed-rate mortgage in which the rate or payment amounts do not change over the full term of the loan. Indeed, some credit counselors often encourage consumers to shop only for fixed-rate mortgages.

The Board has found that some advertisements also use the term ''fixed'' in connection adjustable-rate mortgages, or with fixed-rate mortgages that include low initial payments that will increase. Some of these advertisements make clear that the rate or payment is only ''fixed'' for a defined period of time, but after that the rate or payment may increase. For example, one advertisement reviewed prominently discloses that the product is an ''Adjustable-Rate Mortgage'' in large type, and clearly discloses in standard type that the rate is ''fixed'' for the first three, five, or seven years depending upon the product selected and may increase after that.

However, other advertisements do not adequately disclose that the interest rate or payment amounts are ''fixed'' only for a limited period of time, rather than for the full term of the loan. For example, some advertisements reviewed prominently refer to a ''30-Year Fixed Rate Loan'' or ''Fixed Pay Rate Loan'' on the first page. A footnote on the last page of the advertisements discloses in small type that the loan product is a payment option ARM in which the fully indexed rate and fully amortizing payment will be applied after the first five years. The Board finds that the use of the word ''fixed'' in this manner can mislead consumers into believing that the advertised product is a fixed-rate mortgage with rates and payments that will not change during the term of the loan.

Proposed § 226.24(i)(1) would prohibit the use of the term ''fixed'' in advertisements for credit secured by a dwelling, unless certain conditions are satisfied. The proposal would prohibit the use of the term ''fixed'' in advertisements for variable-rate transactions, unless two conditions are satisfied. First, the phrase ''Adjustable-Rate Mortgage'' or ''Variable-Rate Mortgage'' must appear in the advertisement before the first use of the word ''fixed'' and be at least as conspicuous as every use of the word ''fixed.'' Second, each use of the word ''fixed'' must be accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed and the fact that the rate may vary or the payment may increase after that period. Based on the advertising copy reviewed, particularly the first example described above, the Board believes there are legitimate and appropriate circumstances for using the term ''fixed,'' even in advertisements for variable-rate transactions. Therefore, the Board is not proposing an absolute ban on use of the term ''fixed'' in advertisements for variable-rate transactions. The Board believes that this more targeted approach will curb deceptive advertising practices.

The proposal would also prohibit the use of the term ''fixed'' to refer to the advertised payment in advertisements solely for transactions other than variable-rate transactions where the advertised payment may increase (*i.e.*, fixed-rate mortgage transactions with an initial lower payment that will increase), unless each use of the word ''fixed'' to refer to the advertised payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed and the fact that the payment may increase after that period.

Finally, the proposal would prohibit the use of the term ''fixed'' in advertisements for both variable-rate transactions and non-variable-rate

transactions, unless certain conditions are satisfied. First, the phrase ''Adjustable-Rate Mortgage,'' ''Variable-Rate Mortgage,'' or ''ARM'' must appear in the advertisement with equal prominence as any use of the word ''fixed.'' Second, each use of the term ''fixed'' to refer to a rate, payment, or to the credit transaction, must clearly refer solely to transactions for which rates are fixed and, if used to refer to an advertised payment, be accompanied by an equally prominent and closely proximate statement of the time period for which the advertised payment is fixed and the fact that the payment will increase after that period. Third, if the term ''fixed'' refers to the variable-rate transactions, it must be accompanied by an equally prominent and closely proximate statement of a time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

The Board believes that this approach balances the need to protect consumers from misleading advertisements about the terms that are ''fixed,'' while ensuring that advertisers can continue to use the term ''fixed'' for legitimate, non-deceptive purposes in advertisements for home-secured loans, including variable-rate transactions.

226.24(i)(2)—Misleading Comparisons in Advertisements

Some advertisements for home-secured loans make comparisons between an actual or hypothetical consumer's current rate or payment obligations and the rates or payments that would apply if the consumer obtains the advertised product. The advertised rates or payments used in these comparisons frequently are low introductory ''teaser'' rates or payments that will not apply over the full term of the loan, and do not include amounts for taxes or insurance premiums. In addition, the current rate or payment obligations used in these comparisons frequently include not only the consumer's mortgage payment, but also possible payments for short-term, non-home secured, or revolving credit obligations, such as auto loans, installment loans, or credit card debts.

The Board finds that making comparisons in advertisements can be misleading if the advertisement compares the consumer's current payments or rates to payments or rates available for the advertised product that will only be in effect for a limited period of time, rather than for the term of the loan. Similarly, the Board finds that such comparisons can be misleading if the consumer's current payments include amounts for taxes and insurance premiums, but the payments for the advertised product do not include those amounts. These practices make comparison between the consumer's current obligations and the lower advertised rates or payments misleading.

Proposed § 226.24(i)(2) would prohibit any advertisement for credit secured by a dwelling from making any comparison between an actual or hypothetical consumer's current payments or rates and the payment or simple annual rate that will be available under the advertised product for less than the term of the loan, unless two conditions are satisfied. First, the comparison must include with equal prominence and in close proximity to the ''teaser'' payment or rate, all applicable payments or rates for the advertised product that will apply over the term of the loan and the period of time for which each applicable payment or simple annual rate will apply. Second, the advertisement must include a prominent statement in close proximity to the advertised payments that such payments do not include amounts for taxes and insurance premiums, if applicable. In the case of advertisements for variable-rate transactions where the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the comparison must include: (a) An equally prominent statement in close proximity to the advertised payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur; and (b) a prominent statement in close proximity to the advertised payment that the payment does not include amounts for taxes and insurance premiums, if applicable.

Proposed comment 24(i)–1 would clarify that a misleading comparison includes a claim about the amount that a consumer may save under the advertised product. For example, a statement such as ''save $600 per month on a $500,000 loan'' constitutes an implied comparison between the advertised product's payment and a consumer's current payment.

The Board is not proposing to prohibit comparisons that take into account the consolidation of non-mortgage credit, such as auto loans, installment loans, or revolving credit card debt, into a single, home-secured loan. Debt consolidation can be beneficial for some consumers. Prohibiting the use of comparisons in advertisements that are based solely on low introductory ''teaser'' rates or payments should address abusive practices in advertisements focused on debt consolidation. The Board solicits comment on whether comparisons based on the assumed refinancing of non-mortgage debt into a new home-secured loan are associated with abusive lending practices or otherwise not in the interest of the borrower and should therefore be prohibited as well.

226.24(i)(3)—Misrepresentations About Government Endorsement

Some advertisements for home-secured loans characterize the products offered as ''government loan programs,'' ''government-supported loans,'' or otherwise endorsed or sponsored by a federal or state government entity, even though the advertised products are not government-supported loans, such as FHA or VA loans, or otherwise endorsed or sponsored by any federal, state, or local government entity. The Board finds that such advertisements can mislead consumers into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Proposed § 226.24(i)(3) would prohibit such statements unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity. Proposed comment 24(i)–2 illustrates that a misrepresentation about government endorsement includes a statement that the federal Community Reinvestment Act entitles the consumer to refinance his or her mortgage at the new low rate offered in the advertisement is prohibited because it conveys to the consumer a misleading impression that the advertised product is endorsed or sponsored by the federal government.

226.24(i)(4)—Misleading Use of the Current Mortgage Lender's Name

Some advertisements for home-secured loans prominently display the name of the consumer's current mortgage lender, while failing to disclose or to disclose adequately the fact that the advertisement is by a mortgage lender that is not associated with the consumer's current lender. The Board finds that such advertisements may mislead consumers into believing that their current lender is offering the loan advertised or that the loan terms stated in the advertisement constitute a reduction in the consumer's payment amount or rate, rather than an offer to refinance the current loan with a different creditor. Proposed § 226.24(i)(4) would prohibit any advertisement for a home-secured loan, such as a letter, that is not sent by or on behalf of the consumer's current

lender from using the name of the consumer's current lender, unless the advertisement also discloses with equal prominence: (a) The name of the person or creditor making the advertisement; and (b) a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

226.24(i)(5)—Misleading Claims of Debt Elimination

Some advertisements for home-secured loans include statements that promise to eliminate, cancel, wipe-out, waive, or forgive debt. The Board finds that such advertisements can mislead consumers into believing that they are entering into a debt forgiveness program rather than merely replacing one debt obligation with another. Proposed § 226.24(i)(5) would prohibit advertisements for credit secured by a dwelling that offer to eliminate debt, or waive or forgive a consumer's existing loan terms or obligations to another creditor. Proposed comment 24(i)–3 provides examples of claims that would be prohibited. These include the following claims: ''Wipe-Out Personal Debts!'', ''New DEBT-FREE Payment'', ''Set yourself free; get out of debt today'', ''Refinance today and wipe your debt clean!'', ''Get yourself out of debt * * * Forever!'', and, in the context of an advertisement referring to a consumer's existing obligations to another creditor, ''Pre-payment Penalty Waiver.'' The proposed comment would also clarify that this provision does not prohibit an advertisement for a home-secured loan from claiming that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt.

226.24(i)(6)—Misleading Claims Suggesting a Fiduciary or Other Relationship

Some advertisements for home-secured loans attempt to create the impression that the mortgage broker or lender, its employees, or its subcontractors, have a fiduciary relationship with the consumer. The Board finds that such advertisements may mislead consumers into believing that the broker or lender will consider only the consumer's best interest in offering a mortgage loan to the consumer, when, in fact, the broker or lender may be considering its own interests. Proposed § 226.24(i)(6) would prohibit advertisements for credit secured by a dwelling from using the terms ''counselor'' or ''financial advisor'' to refer to a for-profit mortgage broker or lender, its employees, or persons working for the broker or lender that are involved in offering, originating or selling mortgages. The Board recognizes that counselors and financial advisors do play a legitimate role in assisting consumers in selecting appropriate home-secured loans. Nothing in this rule would prohibit advertisements for bona fide consumer credit counseling services, such as counseling services provided by non-profit organizations, or bona fide financial advisory services, such as services provided by certified financial planners.

226.24(i)(7)—Misleading Foreign-Language Advertisements

Some advertisements for home-secured loans are targeted to non-English speaking consumers. In general, this is an appropriate means of promoting home ownership or offering loans to under-served, immigrant communities. In some of these advertisements, however, information about some of the trigger terms or required disclosures, such as a low introductory ''teaser'' rate or payment, is provided in a foreign language, while information about other trigger terms or required disclosures, such as the fully-indexed rate or fully amortizing payment, is provided only in English. The Board finds that this practice can mislead non-English speaking consumers who may not be able to comprehend the important English-language disclosures. Proposed § 226.24(i)(7) would prohibit advertisements for home-secured loans from providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English. Advertisements that provide all disclosures in both English and a foreign language or advertisements that are entirely in English or entirely in a foreign language would not be affected by this prohibition.

XI. Mortgage Loan Disclosures

A. Early Mortgage Loan Disclosures—§ 226.19

TILA Section 128(b)(1) provides that the primary closed-end disclosure (referred to in this subpart as the ''mortgage loan disclosure''), which includes the annual percentage rate (APR) and other material disclosures, must be delivered ''before the credit is extended.'' 15 U.S.C. 1638(b)(1). A separate rule applies to residential mortgage transactions subject to the Real Estate Settlement Procedures Act (RESPA) and requires that ''good faith estimates'' of the mortgage loan disclosure be made ''before the credit is extended, or shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.'' 15 U.S.C. 1638(b)(2).

The Board proposes to amend Regulation Z to extend the early mortgage loan disclosure requirement for residential mortgage transactions to other types of closed-end mortgage transactions, including mortgage refinancings, home equity loans, and reverse mortgages. Consistent with the existing requirement for residential mortgage transactions, this requirement would be limited to transactions secured by a consumer's principal dwelling. The Board also proposes to require that the early mortgage loan disclosure be delivered before the consumer pays a fee to any person for these transactions. The Board is proposing an exception to the fee restriction, however, for obtaining information on the consumer's credit history.

This proposal is made pursuant to TILA Section 105(a), which mandates that the Board prescribe regulations to carry out TILA's purposes, and authorizes the Board to create such classifications, differentiations, or other provisions, and to provide for 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 TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 U.S.C. 1604(a). TILA Section 102(a) provides, in pertinent part, that the Act's purposes are to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. 15 U.S.C. 1601(a). The proposal is intended to help consumers make informed use of credit and shop among available credit alternatives.

Under the current rule, creditors need not deliver mortgage loan disclosures on non-purchase money mortgage transactions until consummation. By that time, consumers may not be in a position to make meaningful use of the disclosure. Once consumers have reached the settlement table, it is likely too late for them to use the disclosure to shop among mortgages or to inform themselves adequately of the terms of the loan. Consumers are presented at

settlement with a large, often overwhelming, number of documents, and they may not reasonably be able to focus adequate attention on the mortgage loan disclosure. Moreover, by the time of loan consummation, consumers may feel committed to the loan because they are accessing their equity for an urgent need, or they have already paid substantial application fees.

The mortgage loan disclosure that consumers would receive early in the application process under this proposal includes a payment schedule, which would illustrate any increases in payments over time. The disclosure also would include an APR that reflects the fully indexed rate in cases of hybrid and payment-option ARMs, which sometimes are marketed on the basis of only an initial, discounted rate or a temporary, minimum payment. Providing this information within three days of application, before the consumer has paid a fee, would help ensure that consumers would have a genuine opportunity to review the credit terms being offered; ensure that the terms are consistent with their understanding of the transaction; assess whether the terms meet their needs and are affordable; and decide whether to go through with the transaction or continue to shop among alternatives.

Disclosure Before Fee Paid

The Board proposes to require that all of the early mortgage loan disclosures be delivered before the consumer pays a fee to any person in connection with the consumer's application for a mortgage transaction. Consumers typically pay fees to apply for a mortgage loan, such as fees for a credit report and property appraisal, as well as nonspecific ''application'' fees. If the fee is significant, a consumer may feel constrained from shopping for alternatives. This risk is particularly high in the subprime market, where consumers often are cash-strapped and where limited price transparency may obscure the benefits of continuing to shop. See part II.C for a discussion of these points. The risk also applies to the prime market, where many consumers would find significant a fee of several hundred dollars such as the fee often imposed for an appraisal and other services.

The proposed early disclosure obligation would be limited to fees paid in connection with an application for a mortgage transaction. This limitation is necessary because the obligation is triggered by a fee paid to any person, not just to the creditor. The Board seeks comment on whether further guidance is necessary to clarify what fees would be deemed in connection with an application.

The Board is proposing an exception to the fee restriction, however, for obtaining information on the consumer's credit history. The proposed exception to the fee restriction recognizes that creditors generally cannot make accurate transaction-specific estimates without having considered the consumer's credit history. To require creditors to bear the cost of reviewing credit history with little assurance the customer will apply for a loan may be unduly burdensome and could undermine the utility of the disclosures. The proposed exception would allow creditors to recoup the bona fide and reasonable amount necessary to obtain a credit report or other, similar form of information on the consumer's credit history.

The Board expects this proposal would impose additional costs on creditors, some of which may be passed on in part to consumers. Some creditors already deliver early mortgage loan disclosures on non-purchase money mortgages. Not all creditors, however, follow this practice, and those that do not would face increased costs, both one-time costs to modify their systems and ongoing costs to originate loans. The Board seeks comment on whether the benefits of this proposal outweigh these costs or other costs commenters identify.

Corresponding changes also would be made to the staff commentary, and certain other conforming amendments to Regulation Z and the staff commentary also are proposed.

B. Future Plans To Improve Disclosure

The Board remains committed to its longstanding belief that better information in the mortgage market can improve competition and help consumers make better decisions. This proposal contains new rules to prevent incomplete or misleading mortgage loan advertisements and solicitations, and to require lenders to provide mortgage disclosures more quickly so that consumers can get the information they need when it is most useful to them. The Board recognizes that these disclosures need to be updated to reflect the increased complexity of mortgage products. In early 2008, the Board will begin testing current TILA mortgage disclosures and potential revisions to these disclosures through one-on-one interviews with consumers. The Board expects that this testing will identify potential improvements for the Board to propose for public comment in a separate rulemaking.

XII. Civil Liability and Remedies; Administrative Enforcement

Consumer Remedies for Unfair, Deceptive, or Abusive Practices

The restrictions on loan terms and lending practices in proposed §§ 226.35 and 226.36, as well as the advertising restrictions in proposed § 226.24(i), are based on the Board's authority under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2). Consumers who bring timely actions against creditors for violations of these restrictions may be able to recover: (i) Actual damages; (ii) statutory damages in an individual action of up to $2,000 or, in a class action, total statutory damages for the class of up to $500,000 or one percent of the creditor's net worth, whichever is less; (iii) special statutory damages equal to the sum of all finance charges and fees paid by the consumer; and (iv) court costs and attorney fees. TILA Section 130(a), 15 U.S.C. 1640(a).[72]

If a loan is a HOEPA loan—that is, its APR or fees exceed the triggers in § 226.32(a)—and the creditor has assigned it to another person, consumers may be able to obtain from the assignee all of the foregoing damages, including the finance charges and fees paid by the consumer. TILA Section 131(d), 15 U.S.C. 1641(d). For all other loans, TILA Section 131(e), 15 U.S.C. 1641(e), limits the liability of assignees for violations of Regulation Z to disclosure violations that are apparent on the face of the disclosure statement required by TILA.

TILA does not authorize private civil actions against parties other than creditors and assignees. A creditor is the party to whom the debt is initially payable. TILA Section 103(f), 15 U.S.C. 1602(f). A mortgage broker is not a creditor unless the debt is initially payable to the broker. Loan servicers may be creditors, but often they are not. Neither is a servicer treated as an assignee under TILA if the servicer is or was the owner of the obligation only for

[72] Section 130(a), 15 U.S.C. 1640(a), authorizes recovery of amounts of types (i), (ii), and (iv) from a creditor for a failure to comply with any requirement imposed under Chapter 2, which includes Section 129, 15 U.S.C. 1639. Section 130(a)(4), 15 U.S.C. 1640(a)(4), further authorizes recovery of amounts of type (iii) for a failure to comply with any requirement under Section 129, 15 U.S.C. 1639, unless the creditor demonstrates that the failure to comply is not material. Under TILA Section 103(y), 15 U.S.C. 1602(y), a reference to a requirement imposed under TILA or any provision thereof also includes a reference to the regulations of the Board under TILA or the provision in question. Therefore, Section 130(a), 15 U.S.C. 1640(a), authorizes recovery from a creditor of amounts of all four types if the creditor fails to comply with a Board regulation adopted under authority of Section 129(l)(2), 15 U.S.C. 1639(l)(2).

purposes of administrative convenience in servicing the obligation. TILA Section 131(f), 15 U.S.C. 1641(f).

A Consumer's Right to Rescind

A consumer has a right to rescind a transaction for up to three years after consummation when the mortgage contains a provision prohibited by a rule adopted under authority of TILA Section 129(l)(2). *See* TILA Sections 125 and 129(j), 15 U.S.C. 1636 and 1639(j). Moreover, any consumer who has the right to rescind a transaction may rescind the transaction as against any assignee. TILA Section 131(c), 15 U.S.C. 1641(c). The right of rescission does not extend, however, to home purchase loans, construction loans, or certain refinancings with the same creditor. TILA Section 125(e), 15 U.S.C. 1636.

Under current Regulation Z, 12 CFR 226.23(a)(3), footnote 48, a HOEPA loan having a prepayment penalty that does not conform to the requirements of § 226.32(d)(7) is a mortgage containing a provision prohibited by TILA Section 129, 15 U.S.C. 1639, and, therefore, is subject to the three-year right of the consumer to rescind. Proposed § 226.35(b)(3), which would be adopted under authority of Section 129(l)(2), 15 U.S.C. 1639(l)(2), would apply the restrictions on prepayment penalties in § 226.32(d)(6) and (7) to higher-priced mortgage loans, as defined in proposed § 226.35(a). Accordingly, the Board is proposing to revise footnote 48 to clarify that a higher-priced mortgage loan (whether or not it is a HOEPA loan) having a prepayment penalty that does not conform to the requirements of § 226.32(d)(7), as incorporated in § 226.35(b)(3), is also subject to a three-year right of rescission. (As mentioned, however, the right of rescission does not extend to home purchase loans, construction loans, or certain refinancings with the same creditor.) Other rules the Board is proposing would not be prohibitions of particular provisions of mortgages, and violations of those rules therefore would not trigger the extended right of rescission.

Advertising Rules and Civil Liability

The Board's proposal in connection with advertising practices presents a unique case with respect to civil liability under TILA. TILA Section 130 provides for civil liability of creditors for violations only of chapters 2, 4, and 5 of the act, 15 U.S.C. 1640(a), whereas the advertising provisions of TILA are found in chapter 3. Accordingly, the Board's proposed rules relating to advertising disclosures, such as the disclosures about rates or payments, would not create civil liability for creditors, assignees, or other persons, because those rules would be promulgated under the Board's general rulemaking authority in TILA Section 105(a), 15 U.S.C. 1604(a). These proposed rules would, however, be subject to administrative enforcement by appropriate agencies.

Proposed § 226.24(i), which would prohibit certain acts or practices in connection with closed-end advertisements for credit secured by a dwelling, would be promulgated under the Board's authority in TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2). Section 130(a), 15 U.S.C. 1640(a), authorizes a civil action by any person against a creditor who fails to comply with respect to that person with a rule adopted under authority of Section 129(l)(2), 15 U.S.C. 1639(l)(2). It is not clear, however, whether a consumer may bring an action against a creditor under Section 130(a), 15 U.S.C. 1640(a), for violating an advertising restriction in proposed § 226.24(i) if the consumer has not obtained a mortgage loan from the creditor.

Administrative Enforcement

In addition to providing consumers remedies against creditors and assignees, the statute authorizes various agencies to enforce Regulation Z administratively against various parties. The federal banking agencies may enforce the regulation against banks and thrifts. TILA Section 108(a), 15 U.S.C. 1607(a). The Federal Trade Commission (FTC) is generally authorized to enforce violations of Regulation Z as to any other entity or individual. TILA Section 108(c), 15 U.S.C. 1607(c). State attorneys general may enforce violations of regulations adopted under authority of TILA Section 129(l)(2). See TILA Section 130(e), 15 U.S.C. 1640(e).

XIII. Effective Date

Under TILA, the Board's disclosure regulations are to have an effective date of that October 1 which follows by at least six months the date of promulgation. TILA Section 105(d), 15 U.S.C. 1604(d). However, the Board may, at its discretion, lengthen the implementation period for creditors to adjust their forms to accommodate new requirements, or shorten the period where the Board makes a specific finding that such action is necessary to prevent unfair or deceptive disclosure practices. *Id.* The Board requests comment on whether six months would be an appropriate implementation period for the proposed rules. Specifically, the Board requests comment on the length of time creditors may need to implement the proposed rules, as well as on whether the Board should specify a shorter implementation period for certain provisions in order to prevent unfair or deceptive practices.

XIV. 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, among other things, to 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 (12 CFR 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 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. Paperwork burden associated with entities that are not creditors will be accounted for by other federal agencies. 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 46,880 hours, from 552,398 to 599,278 hours.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents 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, the burden estimate for this rulemaking does not include the burden addressing changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z as announced in a separate proposed rulemaking (Docket No. R–1286).

The Federal Reserve proposes revisions to §§ 226.16 and 226.24 to require that advertisements provide accurate and balanced information, in a clear and conspicuous manner. Additional proposed revisions to § 226.24 would prohibit advertisements that are deceptive.

The proposed changes to the advertising provisions would amend the open-end home-equity plan advertising rules in § 226.16 and amend the closed-end credit advertising rules in § 226.24. The two most significant changes in § 226.16 relate to the clear and conspicuous standard and the advertisement of introductory terms in home-equity plans. The three most significant changes in § 226.24 relate to strengthening the clear and conspicuous standard for advertising disclosures, regulating the disclosure of rates and payments in advertisements to ensure that low introductory or ''teaser'' rates or payments are not given undue emphasis, and prohibiting certain acts or practices in advertisements that the Federal Reserve finds inconsistent with the standards set forth in TILA Section 129(l)(2). The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 40 hours (one business week) to revise and update their advertising materials to comply with the proposed disclosure requirements in §§ 226.16 and 226.24. These one-time revisions would increase the burden by 46,880 hours.

The other federal 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 61,656,695 hours. The proposed rule would increase the estimated annual burden for all institutions subject to Regulation Z by 772,000 hours to 62,428,695 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, 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 (7100–0199), Washington, DC 20503.

XV. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. An entity is considered ''small'' if it has $165 million or less in assets for banks and other depository institutions; and $6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers.[73]

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.

Reasons for the Proposed Rule

Congress enacted 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. One of the stated purposes of TILA is 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. TILA's disclosure requirements 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 directs the Board to prescribe regulations to carry out the purposes of the statute.

Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also authorized the Board to prohibit acts or

[73] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes; available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers.

The proposed regulations would prohibit certain acts or practices in connection with closed-end mortgage loans to address problems that have been observed in the mortgage market, particularly the subprime market. Some of the proposed prohibitions or restrictions would apply only to higher-priced closed-end mortgage loans secured by the consumer's principal dwelling. These include: (1) Prohibiting a pattern or practice of extending credit based on the collateral without considering the borrower's ability to repay; (2) requiring creditors to establish escrow accounts for taxes and insurance for first-lien loans; (3) requiring creditors to verify income and assets they rely upon in making loans; and (4) prohibiting prepayment penalties except under certain conditions.

Other proposed prohibitions or restrictions would apply generally to closed-end mortgage loans secured by the consumer's principal dwelling. These include restrictions on certain creditor payments to brokers, a prohibition on coercion of appraisers, and a prohibition on certain mortgage loan servicing practices. Finally, the proposal would prohibit certain advertising practices in connection with closed-end mortgage loans secured by a consumer's dwelling.

The Board's proposal also would require certain TILA disclosures for closed-end mortgages to be provided to the consumer earlier in the loan process. The proposal would revise the Regulation Z advertising rules to ensure that advertisements for open-end and closed-end mortgage loans provide accurate and balanced information about rates and payments.

Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains this information. In summary, the proposed amendments to Regulation Z are designed to achieve three goals: (1) Prohibit certain acts or practices for higher-priced mortgage loans secured by a consumer's principal dwelling and prohibit other acts or practices for closed-end mortgage loans secured by a consumer's principal dwelling; (2) revise the disclosures required in advertisements for credit secured by a consumer's dwelling and prohibit certain practices in connection with closed-end mortgage advertising; and (3) require disclosures for closed-end mortgages to be provided earlier in the transaction.

The legal basis for the proposed rule is in Sections 105(a), 122(a), and 129(l)(2) of TILA. A more detailed discussion of the Board's rulemaking authority is set forth in part V of the **SUPPLEMENTARY INFORMATION**.

Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in closed-end home-secured lending and servicing. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[74] All small entities that originate, extend, or service closed-end loans secured by a consumer's dwelling potentially could be subject to the proposed rule.

The Board can, however, identify through data from Reports of Condition and Income (''call reports'') approximate numbers of small depository institutions that would be subject to the proposed rules. Based on December 2006 call report data, approximately 6,932 small institutions would be subject to the proposed rule. Approximately 17,618 depository institutions in the United States filed call report data, approximately 13,018 of which had total domestic assets of $165 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4,558 banks, 615 thrifts and 7,691 credit unions that filed call report data and were considered small entities, 4,389 banks, 574 thrifts, and 5,104 credit unions, totaling 10,067 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

	Filed call report data	Filed call report data and had assets <= $165M	Filed call report data and originated or extended mortgage credit	Filed call report data and originated or extended mortgage credit with assets <= $165M	Filed call report data and originated or extended mortgage credit with assets <= $165M and did not file HMDA
Commercial banks	7,423	4,558	7,210	4,389	2,808
Thrifts[75]	1,344	615	1,280	574	254
Credit unions	8,535	7,691	5,948	5,104	3,870
Other	316	154	0	0	0
Total	17,618	13,018	14,438	10,067	6,932

The Board cannot identify with certainty the number of small non-depository institutions that would be subject to the proposed rule. Home Mortgage Disclosure Act (HMDA)[76] data

[74] 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.'' § 226.1(c)(1).

[75] Thrifts include savings banks, savings and loan associations, co-operative and industrial banks.

[76] The 8,886 lenders (both depository institutions and mortgage companies) covered by HMDA in 2006 accounted for an estimated 80% of all home lending in the United States. Under HMDA, lenders use a ''loan/application register'' (HMDA/LAR) to report information annually to their federal supervisory agencies for each application and loan acted on during the calendar year. Lenders must make their HMDA/LARs available to the public by March 31 following the year to which the data relate, and they must remove the two date-related fields to help preserve applicants' privacy. Only lenders that have offices (or, for non-depository institutions, are deemed to have offices) in

Continued

indicate that 2,004 non-depository institutions filed HMDA reports in 2006.[77] Based on the small volume of lending activity reported by these institutions, most are likely to be small.

Certain parts of the proposal would apply to mortgage brokers and mortgage servicers. According to the National Association of Mortgage Brokers, in 2004 there were 53,000 mortgage brokerage companies that employed an estimated 418,700 people.[78] The Board believes that most of these companies are small entities.[79]

The proposal would prohibit certain unfair mortgage servicing practices. The Board is not aware, however, of a source of data for the number of small mortgage servicers. The available data are not sufficient for the Board to realistically estimate the number of mortgage servicers that would be subject to the proposed rule and that are small as defined by the Small Business Administration. The Board invites comment and information on the number and type of small entities affected by the proposed rule.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in parts VI through VIII and in parts X and XI of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to modify their underwriting practices and home-secured credit disclosures to comply with the revised rules. The precise costs to small entities of updating their systems, disclosures, and underwriting practices are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and/or solicitations and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. Additionally, the proposed rules could affect how mortgage brokers are compensated. The precise costs that the proposed rule would impose on mortgage brokers are also difficult to ascertain. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities, including mortgage brokers. 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.

Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Other federal rules. The Board has not identified any federal rules that conflict with the proposed revisions to Regulation Z.

Overlap with RESPA. Certain terms defined in the proposed rule, such as ''escrow account,'' ''servicer'' and ''servicing,'' cross-reference existing definitions under the U.S. Department of Housing and Urban Development's (HUD) Regulation X (Real Estate Settlement Procedures Act (RESPA).

Overlap with HUD's guidance. The Board recognizes that HUD has issued policy statements regarding creditor payments to mortgage brokers under RESPA and guidance as to disclosure of such payments on the Good Faith Estimate and HUD–1 Settlement Statement. The Board is also aware that HUD has announced its intention to propose improved disclosures for broker compensation under RESPA in the near future. The Board intends that its proposal would complement any proposal by HUD. The proposed provision regarding creditor payments to brokers is intended to be consistent with HUD's existing guidance regarding broker compensation under Section 8 of RESPA.

Identification of Duplicative, Overlapping, or Conflicting State Laws

Certain sections of the proposed rules may result in inconsistency with certain state laws.

Escrows. Certain states have laws regulating escrows for taxes and insurance. Section 226.35(b)(4) would require creditors to establish escrow accounts for taxes and insurance for first-lien higher-priced loans, but allow creditors to allow borrowers to opt out of escrows 12 months after loan consummation. These provisions may be inconsistent with certain state laws that limit creditors' ability to require escrows or provide consumers with a right to opt out of an escrow sooner than 12 months after loan consummation.

Creditor payments to brokers. The Board is aware that many states regulate brokers and their compensation in various respects. Under TILA Section 111, the proposed rule would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

The Board seeks comment regarding any state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

Discussion of Significant Alternatives

The Board considered whether improved disclosures could protect consumers against unfair acts or practices in connection with closed-end mortgage loans secured by a consumer's principal dwelling as well as the proposed rule. While the Board anticipates proposing improvements to mortgage loan disclosures, it does not appear that better disclosures alone will address unfair, abusive, or deceptive practices in the mortgage market, including the subprime market.

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rule on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is set off with bold brackets.

Authority and Issuance

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 is amended to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604►,◄ **[**and**]** 1637(c)(5)►, and 1639(l)◄.

Subpart A—General

2. Section 226.1 is amended by revising paragraph (d)(5) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(d) * * *

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metropolitan areas are required to report under HMDA. However, if a lender is required to report, it must report information on all of its home loan applications and loans in all locations, including non-metropolitan areas.

[77] The 2006 HMDA Data, *http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06draft.pdf.*

[78] *http://www.namb.org/namb/Industry_Facts.asp?SnID=719224934*

[79] In the first quarter of 2007, 77% of brokers (NAICS 522310) had fewer than five employees; only 0.4% had 100 or more employees, thus it seems likely that most have revenues below the threshold. (Bureau of Labor Statistics' Quarterly Census of Employment and Wages).

(5) Subpart E contains special rules for 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 mortgage transactions ► that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling◄.

* * * * *

Subpart B—Open-End Credit

3. Section 226.16 is amended by revising paragraphs (d)(1) through (d)(4), removing and reserving footnote 36e, and adding new paragraphs (d)(6) and (f) to read as follows:

§ 226.16 Advertising.

* * * * *

(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)(1) or (2)◄ **[**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 ►with equal prominence and in close proximity to the initial rate:

(i) T◄**[**t**]**he period of time such ►initial◄ rate will be in effect►;◄ and**[**, with equal prominence to the initial rate,**]**

►(ii) A◄**[**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**]** ►of◄ any minimum periodic payment ►and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely◄, the advertisement also shall state**[**, if applicable,**]** ►with equal prominence and in close proximity to the minimum periodic payment statement◄ that a balloon payment may result►, if applicable◄.[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 is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.◄

(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. ►If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertised extension of credit may, by its terms, exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) 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; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.◄

* * * * *

►(6) *Introductory rates and payments.*

(i) *Definitions.* The following definitions apply for purposes if paragraph (d)(6) of this section.

(A) *Introductory rate.* The term ''introductory rate'' means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Introductory payment.* The term ''introductory payment'' means—

(*1*) For a variable-rate plan, any payment applicable for an introductory period that:

(*i*) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other payments under the plan; and

(*ii*) Is less than other payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(*2*) For a plan other than a variable-rate plan, any payment applicable for an introductory period if that payment is less than other payments that will be in effect under the plan given an assumed balance.

(C) *Introductory period.* An ''introductory period'' means a period of time, less than the full term of the loan, that the introductory rate or introductory payment may be applicable.

(ii) *Stating the term ''introductory''.* If any annual percentage rate is an introductory rate, or if any payment is an introductory payment, the term ''*introductory*'' or ''*intro*'' must be stated in immediate proximity to each listing of the introductory rate or payment.

(iii) *Stating the introductory period and post-introductory rate or payments.* If any annual percentage rate that may be applied to a plan is an introductory rate, or if any payment applicable to a plan is an introductory payment, the following must be disclosed in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the introductory rate or payment:

(A) The period of time during which the introductory rate or introductory payment will apply;

(B) In the case of an introductory rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 226.5b, or 226.16(b)(1)(ii) as applicable; and

(C) In the case of an introductory payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions,

[36e] ►**[**Reserved.**]**◄ **[**See footnote 10b.**]**

payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iv) *Envelope excluded.* The requirements in paragraph (d)(6)(iii) of this section do not apply to an envelope 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) or (d)(1) of this section may alternatively comply with paragraph (b)(1) or (d)(1) of this section by stating the information required by paragraph (b)(1)(ii) of this section or paragraph (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number along with a reference that such number may be used by consumers to obtain additional cost information.◄

Subpart C—Closed-End Credit

4. Section 226.17 is amended by revising paragraph (b) and the introductory text of paragraph (f), and removing and reserving footnote 39 to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain **[**residential**]** mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

* * * * *

(f) *Early disclosures.* If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation ►(except that, for certain mortgage transactions, § 226.19(a)(2) permits redisclosure no later than consummation or settlement, whichever is later).◄ [39]—

* * * * *

5. Section 226.19 is amended by revising the heading and paragraph (a)(1) to read as follows:

§ 226.19 Certain [residential] mortgage and variable-rate transactions.

(a) **[***Residential m***]** ►M◄*ortgage transactions subject to RESPA*—(1)►(i)◄ *Time of disclosures.* In a **[**residential**]** mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) ►that is secured by the consumer's principal dwelling, other than a home equity line of credit subject to § 226.5b,◄ the creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

►(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on the consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosure required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.◄

* * * * *

6. Section 226.24 is revised to read as follows:

§ 226.24 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) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously.◄

►(c)◄**[**(b)**]** *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an ''annual percentage rate,'' using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact.► If an advertisement is for credit not secured by a dwelling, t◄**[**T**]**he advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.► If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.◄

►(d)◄**[**(c)**]** *Advertisement of terms that require additional disclosures*—(1) ►*Triggering terms.*◄ If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph ►(d)◄**[**(c)**]**(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) ►*Additional terms.*◄ An advertisement stating any of the terms in paragraph ►(d)◄**[**(c)**]**(1) of this section shall state the following terms,[49] as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment ►, which reflect the repayment obligations over the full term of the loan, including any balloon payment◄.

(iii) The ''annual percentage rate,'' using that term, and, if the rate may be increased after consummation, that fact.

►(e)◄**[**(d)**]** *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), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph ►(d)◄**[**(c)**]**(2) of this section, it shall be considered a single advertisement if—

[39] ►**[**Reserved.**]**◄ **[**For certain residential mortgage transactions, section 226.19(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.**]**

[49] ►**[**Reserved.**]**◄**[**An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.**]**

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of the credit terms in paragraph ►(d)◄[(c)](1) of this section 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) complies with paragraph ►(d)◄[(c)](2) of this section 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.

►(f) *Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling.*

(1) *Scope.* The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) *Disclosure of rates*—(i) *In general.* If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each simple annual rate of interest will apply; and

(C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in §§ 226.17(c) and 226.22.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(2)(i) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.

(3) *Disclosure of payments*—(i) *In general.* In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each payment will apply; and

(C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.

(4) *Envelope excluded.* The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope 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.

(g) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating orally any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

(1) Stating orally each of the additional disclosures required under paragraph (d)(2) of this section at a speed and volume sufficient for a consumer to hear and comprehend them; or

(2) Stating orally the information required by paragraph (d)(2)(iii) of this section at a speed and volume sufficient for a consumer to hear and comprehend them, and listing a toll-free telephone number along with a reference that such number may be used by consumers to obtain additional cost information.

(h) *Tax implications.* If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertised extension of credit may, by its terms, exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(1) 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; and

(2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(i) *Prohibited acts or practices in advertisements for credit secured by a dwelling.* The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(1) *Misleading advertising of ''fixed'' rates and payments.* Using the word ''fixed'' to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the advertised payment may increase, unless:

(i) In the case of an advertisement solely for one or more variable-rate transactions,

(A) The phrase ''Adjustable-Rate Mortgage'' or ''Variable-Rate Mortgage'' appears in the advertisement before the first use of the word ''fixed'' and is at least as conspicuous as every use of the word ''fixed'' in the advertisement; and

(B) Each use of the word ''fixed'' to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

(ii) In the case of an advertisement solely for transactions other than variable-rate transactions where the advertised payment may increase (*e.g.*, a fixed-rate mortgage transaction with an initial lower payment), each use of the word ''fixed'' to refer to the advertised payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment may increase after that period; or

(iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,

(A) The phrase ''Adjustable-Rate Mortgage,'' ''Variable-Rate Mortgage,'' or ''ARM'' appears in the advertisement with equal prominence as any use of the term ''fixed,'' ''Fixed-Rate Mortgage,'' or similar terms; and

(B) Each use of the word ''fixed'' to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers

to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(2) *Misleading comparisons in advertisements.* Making any comparison in an advertisement between an actual or hypothetical consumer's current credit payments or rates and any payment or simple annual rate that will be available under the advertised product for less than the term of the loan, unless:

(i) *In general.* The advertisement includes:

(A) An equally prominent, closely proximate comparison to all applicable payments or rates for the advertised product that will apply over the term of the loan and an equally prominent, closely proximate statement of the period of time for which each applicable payment or rate applies; and

(B) A prominent statement in close proximity to the payments described in paragraph (i)(2)(i)(A) of this section that the advertised payments do not include amounts for taxes and insurance premiums, if applicable; or

(ii) *Application to variable-rate transactions.* If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes:

(A) An equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur; and

(B) A prominent statement in close proximity to the advertised payment that the payment does not include amounts for taxes and insurance premiums, if applicable.

(3) *Misrepresentations about government endorsement.* Making any statement in an advertisement that the product offered is a ''government loan program'', ''government-supported loan'', or is otherwise endorsed or sponsored by any federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.

(4) *Misleading use of the current lender's name.* Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:

(i) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

(5) *Misleading claims of debt elimination.* Making any claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

(6) *Misleading claims suggesting a fiduciary or other relationship.* Using the terms ''counselor'' or ''financial advisor'' in an advertisement to refer to a for-profit mortgage broker or mortgage lender, its employees, or persons working for the broker or lender that are involved in offering, originating or selling mortgages.

(7) *Misleading foreign-language advertisements.* Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

7. Section 226.32 is amended by revising paragraph (d)(7) to read as follows:

§ 226.32 Requirements for certain closed-end home mortgages.

* * * * *

(d) * * *

(7) *Prepayment penalty exception.* A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(i) The penalty can be exercised only for the first five years following consummation;

(ii) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; **[**and**]**

(iii) At consummation, the consumer's total monthly ►debt payments◄ **[**debts**]** (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified ►in accordance with § 226.35(b)(2)(i); and◄ **[**by the consumer's signed financial statement, a credit report, and payment records for employment income.**]**

►(iv) The penalty period ends at least sixty days prior to the first date, if any, on which the principal or interest payment amount may increase under the terms of the loan.◄

* * * * *

8. Section 226.34 is amended by revising the heading and paragraph (a)(4) to read as follows:

§ 226.34 Prohibited acts or practices in connection with credit [secured by a consumer's dwelling] ►subject to § 226.32◄.

(a) * * *

[(4) *Repayment ability.* Engage in a pattern or practice of extending credit subject to § 226.32 to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current income, current obligations, and employment. There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to§ 226.32 without verifying and documenting consumers' repayment ability.**]**

►(4) *Repayment ability.* Engage in a pattern or practice of extending credit subject to § 226.32 to consumers based on the value of consumers' collateral without regard to consumers' repayment ability as of consummation, including consumers' current and reasonably expected income, current and reasonably expected obligations, employment, and assets other than the collateral.

(i) There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of failing to—

(A) Verify and document consumers' repayment ability in accordance with § 226.35(b)(2)(i);

(B) Consider consumers' ability to make loan payments based on the interest rate, determined as follows in the case of a loan in which the interest rate may increase after consummation—

(*1*) For a variable rate loan, the interest rate as determined by adding the margin and the index value as of consummation, or the initial rate if that rate is greater than the sum of the index value and margin as of consummation; and

(*2*) For a step-rate loan, the highest interest rate possible within the first seven years of the loan's term;

(C) Consider consumers' ability to make loan payments based on a fully-amortizing payment that includes, as applicable: expected property taxes; homeowners' association dues; premiums for insurance against loss of or damage to property, or against

liability arising out of the ownership or use of the property; premiums for any guarantee or insurance protecting the creditor against consumers' default or other credit loss; and premiums for other mortgage related insurance;

(D) Consider the ratio of consumers' total debt obligations to consumers' income; or

(E) Consider the income consumers will have after paying debt obligations.

(ii) A creditor does not violate this paragraph (a)(4) if it has a reasonable basis to believe consumers will be able to make loan payments for at least seven years after consummation of the transaction, considering the factors identified in paragraph (a)(4)(i) of this section and any other factors relevant to determining repayment ability.

(iii) This paragraph (a)(4) does not apply to temporary or ''bridge'' loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.◄

* * * * *

9. New § 226.35 is added to read as follows:

►§ 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Higher-priced mortgage loans.* (1) For purposes of this section, a higher-priced mortgage loan is a consumer credit transaction that is secured by the consumer's principal dwelling in which the annual percentage rate at consummation will exceed the yield on comparable Treasury securities by three or more percentage points for loans secured by a first lien on a dwelling, or by five or more percentage points for loans secured by a subordinate lien on a dwelling.

(2) Comparable Treasury securities are determined as follows for variable rate loans:

(i) For a loan with an initial rate that is fixed for more than one year, securities with a maturity matching the duration of the fixed-rate period, unless the fixed-rate period exceeds seven years, in which case the creditor should use the rules applied to non-variable rate loans; and

(ii) For all other loans, securities with a maturity of one year.

(3) Comparable Treasury securities are determined as follows for non-variable rate loans:

(i) For a loan with a term of twenty years or more, securities with a maturity of ten years;

(ii) For a loan with a term of more than seven years but less than twenty years, securities with a maturity of seven years; and

(iii) For a loan with a term of seven years or less, securities with a maturity matching the term of the transaction.

(4) The creditor shall use the yield on Treasury securities as of the 15th day of the preceding month if the creditor receives the application between the 1st and the 14th day of the month and as of the 15th day of the current month if the creditor receives the application on or after the 15th day.

(5) Notwithstanding paragraph (a)(1) of this section, a higher-priced mortgage loan excludes a transaction to finance the initial construction of a dwelling, a temporary or ''bridge'' loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to § 226.33, or a home equity line of credit subject to § 226.5b.

(b) *Rules for higher-priced mortgage loans.* Higher-priced mortgage loans are subject to the following restrictions:

(1) *Repayment ability.* A creditor shall not engage in a pattern or practice of extending credit as provided in § 226.34(a)(4).

(2) *Verification of income and assets relied on.* (i) A creditor shall not rely on amounts of income, including expected income, or assets in approving an extension of credit unless the creditor verifies such amounts by the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(ii) A creditor has not violated paragraph (b)(2)(i) of this section if the amounts of income and assets that the creditor relied upon in approving the transaction are not materially greater than the amounts of the consumer's income or assets that the creditor could have verified pursuant to paragraph (b)(2)(i) of this section at the time the loan was consummated.

(3) *Prepayment penalties.* A loan shall not include a prepayment penalty provision except under the conditions provided in § 226.32(d)(7).

(4) *Failure to escrow for property taxes and insurance.* Prior to or at consummation of a loan secured by a first lien on a dwelling, an escrow account must be established for payment of property taxes; premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property; premiums for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and premiums for other mortgage-related insurance.

(i) A creditor may permit a consumer to cancel the escrow account required in paragraph (b)(4) only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than twelve months after consummation.

(ii) For purposes of this section, ''escrow account'' shall have the same meaning as in 24 CFR 3500.17(b) as amended.

(5) *Evasion; open-end credit.* In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.◄

10. New § 226.36 is added to read as follows:

►§ 226.36 Prohibited acts or practices in connection with credit secured by a consumer's principal dwelling.

(a) *Creditor payments to mortgage brokers.* (1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, except as provided in paragraph (a)(2) of this section, a creditor shall not make any payment, directly or indirectly, to a mortgage broker unless the broker enters into a written agreement with the consumer that satisfies the conditions set forth in this paragraph (a)(1). A creditor payment to a mortgage broker subject to this paragraph (a)(1) shall not exceed the total compensation amount stated in the written agreement, reduced by any amounts paid directly by the consumer or by any other source. The written agreement must be entered into before the consumer pays a fee to any person in connection with the mortgage transaction or submits a written application to the broker for the transaction, whichever is earlier. The written agreement must include a clear and conspicuous statement—

(i) Of the total amount of compensation the mortgage broker will receive and retain from all sources, as a dollar amount;

(ii) That the consumer will pay the entire amount of compensation that the mortgage broker will receive and retain, even if all or part is paid directly by the creditor, because the creditor recovers such payments through a higher interest rate; and

(iii) That creditor payments to a mortgage broker can influence the broker to offer certain loan products or terms to the consumer that are not in the consumer's interest or are not the most

favorable the consumer otherwise could obtain.

(2) Paragraph (a)(1) of this section does not apply to a transaction—

(i) That is subject to a state statute or regulation that expressly imposes a duty on mortgage brokers, under which a mortgage broker may not offer to consumers loan products or terms that are not in consumers' interest or are less favorable than consumers otherwise could obtain, and that requires that a mortgage broker provide consumers with a written agreement that includes a description of the mortgage broker's role in the transaction and the mortgage broker's relationship to the consumer, as defined by such statute or regulation; or

(ii) Where the creditor can demonstrate that the compensation it pays to a mortgage broker in connection with a transaction is not determined, in whole or in part, by reference to the transaction's interest rate.

(b) *Misrepresentation of value of consumer's dwelling*—(1) *Coercion of appraiser.* In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(i) Examples of actions that violate paragraph (b)(1) of this section include:

(A) Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling;

(B) Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount; and

(C) Conditioning an appraiser's compensation on loan consummation.

(ii) Examples of actions that do not violate this subsection include:

(A) Asking an appraiser to consider additional information about a consumer's principal dwelling or about comparable properties;

(B) Requesting that an appraiser provide additional information about the basis for a valuation;

(C) Requesting that an appraiser correct factual errors in a valuation;

(D) Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;

(E) Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract;

(F) Terminating a relationship with an appraiser for violations of applicable federal or state law or breaches of ethical or professional standards; and

(G) Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

(2) *When extension of credit prohibited.* In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows or has reason to know, at or before loan consummation, of a violation of § 226.36(b)(1) in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(3) *Appraiser defined.* As used in this paragraph (b), an appraiser is a person who engages in the business of providing assessments of the value of dwellings. The term ''appraiser'' includes persons that employ, refer, or manage appraisers and affiliates of such persons.

(c) *Mortgage broker defined.* For purposes of this section, the term ''mortgage broker'' means a person, other than an employee of a creditor, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit. The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person, or by drawing on a bona fide warehouse line of credit.

(d) *Servicing practices.* (1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall—

(i) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (d)(2) of this section;

(ii) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period;

(iii) Fail to provide to the consumer within a reasonable time after receiving a consumer's request a schedule of all specific fees and charges that the servicer may impose on the consumer in connection with servicing the consumer's account, including a dollar amount and an explanation of each such fee and the circumstances under which it is imposed; or

(iv) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance of the consumer's obligation that would be required to satisfy the obligation in full as of a specified date.

(2) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment within 5 days of receipt.

(3) For purposes of this paragraph (d), the terms ''servicer'' and ''servicing'' have the same meanings as provided in 24 CFR 3500.2(b), as amended.

(e) This section does not apply to a home equity line of credit subject to § 226.5b.◀

11. In Supplement I to Part 226:

a. Under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(24) Residential Mortgage Transaction,* paragraphs 2(a)(24)–1 and 2(a)(24)–5 are revised.

b. Under *Section 226.16—Advertising:*

i. Paragraph 16–1 is revised, paragraph 16–2 is redesignated as paragraph 16–6, and new paragraphs 16–2 through 16–5 are added.

ii. Under *16(d) Additional requirements for home equity plans,* paragraph 16(d)–3 is revised, paragraphs 16(d)–5, 16(d)–6, and 16(d)–7 are redesignated as paragraphs 16(d)–7, 16(d)–8, and 16(d)–9 respectively, newly designated paragraphs 16(d)–7 and 16(d)–9 and the heading of newly designated paragraph 16(d)–8 are revised, and new paragraphs 16(d)–5 and 16(d)–6 are added.

c. Under *Section 226.17—General Disclosure Requirements, 17(c) Basis of disclosures and use of estimates, Paragraph 17(c)(1),* paragraph 17(c)(1)–8 is revised, and under *17(f) Early disclosures,* paragraph 17(f)–4 is revised.

d. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* the heading is revised, heading *19(a)(1) Time of disclosure* is redesignated as heading *19(a)(1)(i) Time of disclosure,* paragraphs 19(a)(1)(i)–1 and 19(a)(1)(i)–5 are revised, new headings *19(a)(1)(ii) Imposition of fees* and *19(a)(1)(iii) Exception to fee*

restriction are added, and new paragraphs 19(a)(1)(ii)–1, 19(a)(1)(ii)–2, and 19(a)(1)(iii)–1 are added.

e. Under *Section 226.24—Advertising:*

i. Paragraph 24–1 is removed;

ii. Heading *24(d) Catalogues or other multiple-page advertisements; electronic advertisements* is redesignated as *24(e) Catalogues or other multiple-page advertisements; electronic advertisements,* and newly designated paragraphs 24(e)–1, 24(e)–2, and 24(e)–4 are revised;

iii. Headings *24(c) Advertisement of terms that require additional disclosures, Paragraph 24(c)(1),* and *Paragraph 24(c)(2),* are redesignated as *24(d) Advertisement of terms that require additional disclosures, Paragraph 24(d)(1),* and *Paragraph 24(d)(2)* respectively, newly designated paragraphs 24(d)–1, 24(d)(1)–3, and 24(d)(2)–2 are revised, newly designated paragraphs 24(d)(2)–3 and 24(d)(2)–4 are further redesignated as paragraphs 24(d)(2)–4 and 24(d)(2)–5 respectively, new paragraph 24(d)(2)–3 is added, and newly designated paragraph 24(d)(2)–5 is revised;

iv. Heading *24(b) Advertisement of rate of finance charge* is redesignated as *24(c) Advertisement of rate of finance charge,* and newly designated paragraphs 24(c)–2 and 24(c)–3 are revised, newly designated paragraph 24(c)–4 is removed, newly designated paragraph 24(c)–5 is redesignated as paragraph 24(c)–4 and revised, and newly designated paragraph 24(c)–6 is further redesignated as paragraph 24(c)–5.

v. New heading *24(b) Clear and conspicuous standard* is added, and new paragraphs 24(b)–1 through 24(b)–5 are added; and

vi. New headings *24(f) Disclosure of rates or payments in advertisements for credit secured by a dwelling, 24(f)(3) Disclosure of payments, 24(g) Alternative disclosures—television or radio advertisements, 24(h) Statements of tax deductibility, and 24(i) Prohibited acts or practices in advertisements for credit secured by a dwelling,* and new paragraphs 24(f)–1 through 24(f)–5, 24(f)(3)–1 and 24(f)(3)–2, 24(g)–1 through 24(g)–3, 24(h)–1, and 24(i)–1 through 24(i)–3 are added.

f. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage:*

i. New heading *Paragraph 32(a)(2)* and new paragraph 32(a)(2)–1 are added.

ii. Under *32(d) Limitations,* new paragraph 32(d)–1 is added.

iii. Under *32(d)(7) Prepayment penalty exception,* new paragraph 32(d)(7)–1 is added.

iv. Under *Paragraph 32(d)(7)(iii),* paragraphs 32(d)(7)(iii)–1 and 32(d)(7)(iii)–2 are removed, and new paragraphs 32(d)(7)(iii)–1 through 32(d)(7)(iii)–4 are added.

v. New heading *Paragraph 32(d)(7)(iv)* and new paragraphs 32(d)(7)(iv)–1 and 32(d)(7)(iv)–2 are added.

g. Under *Section 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling; Open-end Credit:*

i. The heading is revised.

ii. Under *34(a) Prohibited acts or practices for loans subject to § 226.32, 34(a)(4) Repayment ability,* paragraphs 34(a)(4)–3 and 34(a)(4)–4 are removed, paragraphs 34(a)(4)–1 and 34(a)(4)–2 are redesignated as paragraphs 34(a)(4)–3 and 34(a)(4)–4 respectively and revised, new paragraphs 34(a)(4)–1 and 34(a)(4)–2 are added, and new headings *Paragraph 34(a)(4)(i), Paragraph 34(a)(4)(i)(A), Paragraph 34(a)(4)(i)(B), Paragraph 34(a)(4)(i)(D),* and *Paragraph 34(a)(4)(i)(E)* and new paragraphs 34(a)(4)(i)–1, 34(a)(4)(i)(A)–1 and 34(a)(4)(i)(A)–2, 34(a)(4)(i)(B)–1, 34(a)(4)(i)(D)–1, and 34(a)(4)(i)(E)–1 are added.

h. A new *Section 226.35—Prohibited Acts or Practices in Connection with Higher-priced Mortgage Loans* is added.

i. A new *Section 226.36—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling* is added.

Supplement I to Part 226—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(24) Residential mortgage transaction.

1. *Relation to other sections.* This term is important in [six] ►five◄ provisions in the regulation:

[•] ►i.◄ § 226.4(c)(7)—exclusions from the finance charge.

[•] ►ii.◄ § 226.15(f)—exemption from the right of rescission.

[•] ►iii.◄ § 226.18(q)—whether or not the obligation is assumable.

[• Section 226.19—special timing rules.]

[•] ►iv.◄ § 226.20(b)—disclosure requirements for assumptions.

[•] ►v.◄ § 226.23(f)—exemption from the right of rescission.

* * * * *

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 section 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).

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Subpart B—Open-End Credit

* * * * *

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[.]►, aside from the format requirements related to the disclosure of an introductory rate under §§ 226.16(d)(6) and 226.16(e). Aside from the terms described in §§ 226.16(d)(6) and 226.16(e), the◄ [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 or payments for home—equity plans.* For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(iii)(A)–(C) is disclosed with equal prominence and in close proximity to the introductory rate or payment to which it applies. If the information in § 226.16(d)(6)(iii)(A)–(C) is the same type size and is located immediately next to or directly above or below the introductory rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose introductory rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

3. *Clear and conspicuous standard—Internet advertisements for home-equity plans.* For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or

other devices and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). *See also* comment 16(c)(1)–2.

4. *Clear and conspicuous standard—televised advertisements for home-equity plans.* For purposes of this section, and except as otherwise provided by § 226.16(f) for alternative disclosures, a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for home-equity plans.* For purposes of this section, and except as otherwise provided by § 226.16(f) for alternative disclosures, a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of § 226.5b, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.◄

►6.◄ [2.] *Expressing the annual percentage rate in abbreviated form.* * * *

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16(d) Additional requirements for home-equity plans.

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3. *Statements of tax deductibility.* An advertisement referring to deductibility for tax purposes is not misleading if it includes a statement such as ''consult a tax advisor regarding the deductibility of interest.'' ►An advertisement for a home-equity plan where the plan's terms do not allow for extensions of credit greater than the fair market value of the consumer's dwelling need not give the disclosures regarding which portion of the interest is tax deductible. An advertisement for such a plan is not required to refer to deductibility for tax purposes; however, if it does so, it must not be misleading in this regard.◄

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►5. *Introductory rates and payments in advertisements for home-equity plans.* Section 226.16(d)(6) requires additional disclosures for introductory rates or payments.

i. *Variable-rate plans.* In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no introductory rate or introductory payment. If, however, the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is an introductory rate or introductory payment.

ii. *Immediate proximity.* Including the term ''introductory'' or ''intro'' in the same sentence as the listing of the introductory rate or payment is deemed to be in immediate proximity of the listing.

iii. *Equal prominence, close proximity.* Information required to be disclosed in § 226.16(d)(6)(iii) that is in the same paragraph as the introductory rate or payment (not in a footnote to that paragraph) is deemed to be closely proximate to the listing. Information required to be disclosed in § 226.16(d)(6)(iii) that is in the same type size as the introductory rate or payment is deemed to be equally prominent.

iv. *Amounts and time periods of payments.* Section 226.16(d)(6)(iii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the introductory payment.

v. *Plans other than variable-rate plans.* For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the payment could increase solely if the consumer made an additional draw does not make the payment an introductory payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1000 if the consumer made an additional $10,000 draw, the payment is not an introductory payment.

6. *Reasonably current index and margin.* For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form, it was in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7.◄[5.] *Relation to other sections.* Advertisements for home-equity plans must comply with all provisions in § 226.16, ►except for § 226.16(e),◄ 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).

►8.◄[6.] *Inapplicability of closed-end rules.* * * *

►9.◄[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] ►information◄ not required to be stated in [the] advertisement►s◄, and on situations in which the balloon payment requirement does not apply.[)]

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Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

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17(c) Basis of disclosures and use of estimates.

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Paragraph 17(c)(1).

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8. *Basis of disclosures in variable-rate transactions.* The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to § 226.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to § 226.19(a)(2) for a discussion of the redisclosure in certain [residential] mortgage transactions with a variable-rate feature).

* * * * *

17(f) Early disclosures.

* * * * *

4. *Special rules*. In [residential] mortgage transactions subject to § 226.19, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 226.20.

* * * * *

Section 226.19—Certain [Residential] Mortgage and Variable-Rate Transactions

19(a)(1)►(i)◄ Time of disclosure.

1. *Coverage*. This section requires early disclosure of credit terms in [residential] mortgage transactions that are ►secured by a consumer's principal dwelling and◄ also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be [both a residential mortgage transaction under section 226.2(a) and] a federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.[5(b)]►2◄), and is subject to any interpretations by HUD.► RESPA coverage includes such transactions as loans to purchase dwellings, refinancings of loans secured by dwellings, and subordinate-lien home-equity loans, among others. Although RESPA coverage relates to any dwelling, § 226.19(a) applies to such transactions only if they are secured by a consumer's principal dwelling. Also, home equity lines of credit subject to § 226.5b are not covered by § 226.19(a).◄

* * * * *

5. *Itemization of amount financed*. In many [residential] mortgage transactions, the itemization of the amount financed required by § 226.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed, either with the disclosures provided within three days after application or with the disclosures given at consummation or settlement.

►*19(a)(1)(ii) Imposition of fees.*

1. *Timing of fees*. The consumer must receive the disclosures required by this section before paying any fee to a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to § 226.19(a)(1)(i), except as provided in § 226.19(a)(1)(iii). If the creditor delivers the disclosures to the consumer in person, a fee may be imposed anytime after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, on or after the fourth business day after mailing the disclosure.

2. *Fees restricted*. A creditor or other person may not charge any fee other than to obtain a consumer's credit history, such as for a credit report(s), until the consumer has received the disclosures required by § 226.19(a)(1)(i). For example, until the consumer has received the disclosures, the creditor may not impose a fee on the consumer for an appraisal or for underwriting.

19(a)(1)(iii) Exception to fee restriction.

1. *Requirements for exception*. A creditor or other person may impose a fee before the consumer receives the required disclosures if it is for obtaining information on the consumer's credit history, such as by purchasing a credit report(s) on the consumer. The fee also must be *bona fide* and reasonable in amount. For example, a creditor may collect a fee for obtaining a credit report(s) if it is the creditor's ordinary practice to obtain such credit history information. The creditor may refer to this fee as an ''application fee.''◄

* * * * *

Section 226.24—Advertising

[1. *Clear and conspicuous standard*. This section is subject to the general ''clear and conspicuous'' standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.]

* * * * *

►*24(b) Clear and conspicuous standard.*

1. *Clear and conspicuous standard—general*. This section is subject to the general ''clear and conspicuous'' standard for this subpart, *see* § 226.17(a)(1), but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the advertisement of rates and payments as described in comment 24(b)–2 below. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

2. *Clear and conspicuous standard—rates and payments in advertisements for credit secured by a dwelling*. For purposes of § 226.24(f), a clear and conspicuous disclosure means that the required information in §§ 226.24(f)(2)(i) and 226.24(f)(3)(i)(A) and (B) is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures, and that the required information in § 226.24(f)(3)(i)(C) is disclosed with prominence and in close proximity to the advertised rates or payments triggering the required disclosures. If the required information in §§ 226.24(f)(2)(i) and 226.24(f)(3)(i)(A) and (B) is the same type size as the advertised rates or payments triggering the required disclosures, the disclosures are deemed to be equally prominent. The information in § 226.24(f)(3)(i)(C) must be disclosed with prominence, but need not be disclosed with equal prominence or be the same type size as the payments triggering the required disclosures. If the required information in §§ 226.24(f)(2)(i) and 226.24(f)(3)(i) is located immediately next to or directly above or below the advertised rates or payments triggering the required disclosures, without any intervening text or graphical displays, the disclosures are deemed to be in close proximity. Notwithstanding the above, for electronic advertisements that disclose rates or payments, compliance with the requirements of § 226.24(e) is deemed to satisfy the clear and conspicuous standard.

3. *Clear and conspicuous standard—Internet advertisements for credit secured by a dwelling*. For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under § 226.24. *See also* comment 24(e)–4.

4. *Clear and conspicuous standard—televised advertisements for credit secured by a dwelling*. For purposes of this section, and except as otherwise provided by § 226.24(g) for alternative disclosures, a clear and conspicuous disclosure in the context of visual text advertisements on television for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under § 226.24. For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for credit secured by a dwelling*. For purposes of this section, and except as otherwise provided by § 226.24(g) for alternative disclosures, a clear and conspicuous disclosure in the context of an oral advertisement for credit secured by a dwelling, whether by radio, television, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.◄

24►(c)◄[(b)] Advertisement of rate of finance charge.

* * * * *

2. *Simple or periodic rates*. The advertisement may not simultaneously state any other rate, except that a simple annual rate or periodic rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate. ►An advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance.◄ For example►,◄[:]

[• I]►i◄n an advertisement for [real estate] ►credit secured by a dwelling◄, a simple ►annual◄ interest rate may be shown in the same type size as the annual percentage rate for the advertised credit►, subject to the requirements of section 226.24(f)◄. ►A simple annual rate or periodic rate that is applied to an unpaid balance is the rate at which interest is accruing; those terms do not include a rate lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate.◄

3. *Buydowns.* When a third party (such as a seller) or a creditor wishes to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with [the rules in] the commentary to § 226.17(c) regarding the basis of transactional disclosures for buydowns. The seller or creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the effect of the buydown agreement on the payment schedule for the buydown period►, but this will◄ [without] trigger[ing] the additional disclosures under § 226.24►(d)◄[(c)](2). [For example, the advertisement may state that ''with this buydown arrangement, your monthly payments for the first three years of the mortgage term will be only $350'' or ''this buydown arrangement will reduce your monthly payments for the first three years of the mortgage term by $150.'']

[4. *Effective rates.* In some transactions the consumer's payments may be based upon an interest rate lower than the rate at which interest is accruing. The lower rate may be referred to as the effective rate, payment rate, or qualifying rate. A creditor or seller may advertise such rates by stating the term of the reduced payment schedule, the interest rate upon which the reduced payments are calculated, the rate at which the interest is in fact accruing, and the annual percentage rate. The advertised annual percentage rate that must accompany this rate must take into account the interest that will accrue but will not be paid during this period. For example, an advertisement may state, ''An effective first-year interest rate of 10 percent. Interest being earned at 14 percent. Annual percentage rate 15 percent.'']

►4◄[5]. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 17(c)(1)–10 regarding the basis of transactional disclosures for such financing.

►i.◄ A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced [initial] ►simple annual◄ rate, provided the advertisement shows ►with equal prominence and in close proximity◄ the limited term to which the reduced rate applies ►and the annual percentage rate that will apply after the term of the initial rate reduction expires. *See* § 226.24(f)◄.

►ii.◄[•] Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 17(c)(1)–10, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

►iii.◄[•] The advertisement may also show the effect of the discount on the payment schedule for the discount period►, but this will◄ [without] trigger[ing] the additional disclosures under § 226.24(d). [For example, the advertisement may state that ''with this discount, your monthly payments for the first year of the mortgage term will be only $577'' or ''this discount will reduce your monthly payments for the first year of mortgage term by $223.'']

24►(d)◄[(c)] Advertisement of terms that require additional disclosures.

1. *General rule.* Under § 226.24►(d)◄[(c)](1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in § 226.24►(d)◄[(c)](2) must also appear. These provisions apply even if the triggering term is not stated explicitly but may be readily determined from the advertisement. For example, an advertisement may state ''80 percent financing available,'' which is in fact indicating that a 20 percent downpayment is required.

Paragraph 24►(d)◄[(c)](1).

* * * * *

3. *Payment amount.* The dollar amount of any payment includes statements such as:

- ''Payable in installments of $103''
- ''$25 weekly''
- ►• ''$500,000 loan for just $1,650 per month''◄
- ''$1,200 balance payable in 10 equal installments''

In the last example, the amount of each payment is readily determinable, even though not explicitly stated. But statements such as ''monthly payments to suit your needs'' or ''regular monthly payments'' are not covered.

* * * * *

Paragraph 24►(d)◄[(c)](2).

* * * * *

2. *Disclosure of repayment terms.* [While t]►T◄he phrase ''terms of repayment'' generally has the same meaning as the ''payment schedule'' required to be disclosed under § 226.18(g)►.◄[,] [s]►S◄ection 226.24►(d)◄[(c)](2)(ii) provides [greater] flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. ►Repayment terms, however, must reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment, *see* comment 24(d)(2)(iii), not just the repayment terms that will apply for a limited period of time.◄ For example:

►i.◄[•] A creditor may use a unit-cost approach in making the required disclosure, such as ''48 monthly payments of $27.83 per $1,000 borrowed.''

[• In an advertisement for credit secured by a dwelling, when any series of payments varies because of a graduated-payment feature or because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, and the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.]

►ii. In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.

iii. In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.

3. *Balloon payment; disclosure of repayment terms.* In some transactions, a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement. A balloon payment results if paying the minimum payments does not fully amortize the outstanding balance by a specified date or time, usually the end of the term of the loan, and the consumer must repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

4.◄[3.] *Annual percentage rate.* The advertised annual percentage rate may be expressed using the abbreviation APR. The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

►5.◄[4.] *Use of examples.* ►A creditor may use◄ [Footnote 49 authorizes the use of] illustrative credit transactions to make the necessary disclosures under § 226.24►(d)◄[(c)](2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by § 226.24►(d)◄[(c)]. The examples must be labeled as such and must reflect representative credit terms [that are] made available by the creditor to present and prospective customers.

24►(e)◄[(d)] Catalogs or other multiple-page advertisements; electronic advertisements.

1. *Definition.* The multiple-page advertisements to which this section 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 § 226.24►(e)◄[(d)].

2. *General.* Section 226.24►(e)◄[(d)] permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or in 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 § 226.24►(d)◄[(c)](1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24►(d)◄[(c)](2) and so is not covered by § 226.24►(e)◄[(d)].

* * * * *

4. *Electronic advertisement.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.24►(e)◄[(d)](1), any statement of terms set forth in § 226.24►(d)◄[(c)](1) 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.

►*24(f) Disclosure of rates and payments in advertisements for credit secured by a dwelling.*

1. *Equal prominence, close proximity.* Information required to be disclosed under §§ 226.24(f)(2)(i) and 226.24(f)(3)(i) that is in the same paragraph as the simple annual rate or payment amount (not in a footnote to that paragraph) is deemed to be closely proximate to the listing. Information required to be disclosed under §§ 226.24(f)(2)(i) and 226.24(f)(3)(i)(A) and (B) that is in the same type size as the simple annual rate or payment amount is deemed to be equally prominent.

2. *Clear and conspicuous standard.* For more information about the applicable clear and conspicuous standard, see comment 24(b)–2.

3. *Comparisons in advertisements.* When making any comparison in an advertisement between an actual or hypothetical consumer's current credit payments or rates and the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the time periods for which those payments or rates will apply, as required by this section.

4. *Application to variable-rate transactions—disclosure of rates.* In advertisements for variable-rate transactions, if a simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, the requirements of § 226.24(f)(2)(i) apply.

5. *Reasonably current index and margin.* For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form, it was in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

24(f)(3) Disclosure of payments.

1. *Amounts and time periods of payments.* Section 226.24(f)(3)(i) requires disclosure of the amounts and time periods of all payments that will apply over the term of the loan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for credit secured by a dwelling offers $300,000 of credit with a 30-year loan term for a payment of $600 per month for the first six months, increasing to $1,500 per month after month six, followed by a balloon payment of $30,000 at the end of the loan term, the advertisement must disclose the amount and time periods of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to each other.

2. *Application to variable-rate transactions—disclosure of payments.* In advertisements for variable-rate transactions, if the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, the requirements of § 226.24(f)(3)(i) apply.

24(g) Alternative disclosures—television or radio advertisements.

1. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 226.24(g), an advertisement must provide a toll-free telephone number. Alternatively, an advertisement 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 should be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several 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 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.''

24(h) Statements of tax deductibility.

1. *When disclosures not required.* An advertisement for a home-secured loan where the loan's terms do not allow for extensions of credit greater than the fair market value of the consumer's dwelling need not give the disclosures regarding which portions of the interest are tax deductible.

24(i) Prohibited acts or practices in advertisements for credit secured by a dwelling.

1. *Misleading comparisons in advertisements—savings claims.* A misleading comparison includes a claim about the amount a consumer may save under the advertised product. For example, a statement such as ''save $300 per month on a $300,000 loan'' constitutes an implied comparison between the advertised product's payment and a consumer's current payment.

2. *Misrepresentations about government endorsement.* A statement that the federal Community Reinvestment Act entitles the consumer to refinance his or her mortgage at the low rate offered in the advertisement is prohibited because it conveys a misleading impression that the advertised product is endorsed or sponsored by the federal government.

3. *Misleading claims of debt elimination.* The prohibition against misleading claims of debt elimination or waiver or forgiveness does not apply to claims that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt. Examples of misleading claims of debt elimination or waiver or forgiveness of loan terms with, or obligations to, another creditor of debt include: ''Wipe-Out Personal Debts!'', ''New DEBT-FREE Payment'', ''Set yourself free; get out of debt today'', ''Refinance today and wipe your debt clean!'', ''Get yourself out of debt * * * Forever!'', and ''Pre-payment Penalty Waiver.''◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

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►*Paragraph 32(a)(2)*

1. *Exemption limited.* Section 226.32(a)(2) lists certain transactions as being exempt from the provisions of § 226.32. Nevertheless, those transactions may be subject to the provisions of § 226.35, including any provisions of § 226.32 to which § 226.35 refers. *See* 12 CFR 226.35(a).◄

* * * * *

32(d) Limitations.

►1. *Additional prohibitions applicable under other sections.* Section 226.34 sets forth certain prohibitions in connection with mortgage credit subject to § 226.32, in addition to the limitations in § 226.32(d). Further, § 226.35(b) prohibits certain practices in connection with transactions that meet the coverage test in § 226.35(a). Because the coverage test in § 226.35(a) is generally broader than the coverage test in § 226.32(a), most § 226.32 mortgage loans are also subject to the prohibitions set forth in § 226.35(b), in addition to the limitations in § 226.32(d).◄

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32(d)(7) Prepayment penalty exception.

►1. *Other application of section.* The conditions in § 226.32(d)(7) apply to prepayment penalties on mortgage transactions described in § 226.32(a). In

addition, these conditions apply to mortgage transactions covered by § 226.35(a).◄

Paragraph 32(d)(7)(iii).

[1. *Calculating debt-to-income ratio.* ''Debt'' does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants.

2. *Verification.* Verification of employment satisfies the requirement for payment records for employment income.]

►1. *Classifying debt and income.* To determine whether to classify particular funds or obligations as ''debt'' or ''income'' under the prepayment penalty exception in § 226.32(d)(7)(iii), creditors may look to widely accepted governmental and non-governmental underwriting standards, including, for example, those set forth in the Federal Housing Administration's handbook on Mortgage Credit Analysis for Mortgage Insurance on One-to Four-Unit Mortgage Loans.

2. *Debt described.* i. For purposes of § 226.32(d)(7)(iii), ''debt'' includes, but is not limited to, the consumer's liabilities and obligations for:

A. Housing expenses;

B. Loans such as installment and real estate loans;

C. Open-end credit plans; and

D. Alimony, child support, and separate maintenance.

ii. ''Debt'' does not include amounts paid by a borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt.

3. *Income described.* For purposes of § 226.32(d)(7)(iii), ''income'' includes, but is not limited to, funds a consumer receives:

i. From employment (whether full-time, part-time, seasonal, military, or self-employment), including without limitation salary, wages, base pay, overtime pay, bonus pay, tips, and commissions;

ii. As interest or dividends;

iii. As retirement benefits or public assistance; and

iv. As alimony, child support, or separate maintenance payments, to the extent permitted under Regulation B, 12 CFR 202.5(d)(2), 202.6(b)(5).

4. *Verification.* Creditors shall verify income in the manner described in § 226.35(b)(2)(i) and the related comments. Creditors may verify debt with a credit report.

Paragraph 32(d)(7)(iv).

1. *Changes in payment amounts.* Section 226.32(d)(7)(iv) permits a prepayment penalty only if the period during which the penalty may be imposed ends at least sixty days prior to the first date, if any, on which the principal or interest payment amount may increase under the terms of the loan. This permits a consumer to refinance or otherwise pay off all or part of the loan, without a penalty, sixty days before there is an increase in the payment of interest or principal. For example, the principal or interest payment amount may increase because—

i. The loan's interest rate increases;

ii. Scheduled payments of principal or interest increase independently of interest rate changes, for example with a graduated or step-rate transaction; or

iii. Negative amortization occurs and, under the loan terms, triggers an increase in principal or interest payment amounts.

2. *Payment increases excluded from § 226.32(d)(7)(iv).* Payment increases due to the following circumstances are not considered payment increases for purposes of § 226.32(d)(7)(iv):

i. Actual unanticipated late payment, the borrower's delinquency, or default; and

ii. Increased payments made solely at the consumer's option, such as when a consumer chooses to make a payment of interest and principal on a loan that only requires the consumer to pay interest.◄

* * * * *

Section 226.34—Prohibited Acts or Practices in Connection with Credit [*Secured by a Consumer's Dwelling; Open-end Credit*] ►*Subject to § 226.32*◄

34(a) Prohibited acts or practices for loans subject to § 226.32.

* * * * *

34(a)(4) Repayment ability.

►1. *Application of repayment ability rule to § 226.35(a) higher-cost mortgage loans.* The § 226.34(a)(4) prohibition against a pattern or practice of making loans without regard to consumers' repayment ability applies to creditors making mortgage loans described in § 226.32(a). In addition, the § 226.34(a)(4) prohibition applies to creditors making higher-cost mortgage transactions, including residential mortgage transactions, described in § 226.35(a). *See* 12 CFR 226.35(b)(1).

2. *Determination as of consummation.* Section 226.34(a)(4) prohibits a creditor from engaging in a pattern or practice of extending credit subject to § 226.32 to consumers based on the value of consumers' collateral without regard to consumers' repayment ability as of consummation. This prohibition is based on the facts and circumstances that existed as of consummation. Events after consummation may be relevant to determining whether a creditor has violated § 226.34(a)(4), but events after consummation do not, by themselves, establish a violation. For example, a violation is not established if borrowers default after consummation because of serious illness or job loss.◄

[1.]►3.◄ *Income*►*, assets, and employment*◄. Any ►current or reasonably expected assets or current or reasonably◄ expected income [can] ►may◄ be considered by the creditor, except ►the collateral itself◄ [equity income that would be realized from collateral]. For example, a creditor may use information about ►current or expected◄ income other than regular salary or wages, such as income described in paragraph 226.32(d)(7)(iii)–(3) [such as gifts, expected retirement payments, or income from self-employment, such as housecleaning or childcare]. ►Employment should also be considered. In some circumstances, it may be appropriate or necessary to take into account expected changes in employment. For example, depending on all of the facts and circumstances, it may be reasonable to assume that students obtaining professional degrees or certificates will obtain employment upon receiving the degree or certificate. In other circumstances, a creditor may have information indicating that an employed person will become unemployed. A creditor may also take into account assets such as savings accounts or investments that can be used by the consumer.◄

[2.]►4.◄ *Pattern or practice of extending credit—repayment ability.* Whether a creditor [is engaging in or] has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in the particular case. While a pattern or practice is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. In addition, a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of this section.

[3. *Discounted introductory rates.* In transactions where the creditor sets an initial interest rate to be adjusted later (whether fixed or to be determined by an index or formula), in determining repayment ability the creditor must consider the consumer's ability to make loan payments based on the non-discounted or fully-indexed rate at the time of consummation.]

[4. *Verifying and documenting income and obligations.* Creditors may verify and document a consumer's repayment ability in various ways. A creditor may verify and document a consumer's income and current obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include, but are not limited to, a credit report, tax returns, pension statements, and payment records for employment income.]

►*Paragraph 34(a)(4)(i).*

1. *Presumptions.* Section 226.34(a)(4)(i) sets forth particular patterns or practices that would create a presumption that a creditor has violated § 226.34(a)(4). These presumptions may be rebutted with sufficient evidence that a creditor did not engage in a pattern or practice of disregarding repayment ability. These presumptions are also not exhaustive. That is, a creditor may violate § 226.34(a)(4) by patterns or practices other than those specified in § 226.34(a)(4)(i).

Paragraph 34(a)(4)(i)(A).

1. *Failure to verify income and assets relied on.* A creditor is presumed to have violated the prohibition on lending without regard to repayment ability if the creditor has engaged in a pattern or practice of failing to verify and document repayment ability. A pattern or practice of failing to document and verify income and assets relied on to make the credit decision as required by § 226.35(b)(2)(i) would trigger this presumption.

2. *Failure to verify obligations.* A pattern or practice of failing to verify obligations would also trigger this presumption. In general, a credit report may be used to verify obligations. Where two different creditors are extending loans simultaneously, one a first-lien loan and the other a subordinate-lien loan, each creditor is expected to verify the obligation the consumer is undertaking with the other creditor. A pattern or practice of

failing to do so would create a presumption of a violation.

Paragraph 34(a)(4)(i)(B).

1. *Variable rate loans.* For some variable rate loans, the initial interest rate is not based on the index and margin or formula used for later adjustments. In such cases, a pattern or practice of failing to consider the consumer's ability to make loan payments based on the index and margin or formula used for later adjustments, or the initial interest rate, if greater than the sum of the index and margin at consummation, would lead to a presumption that the creditor has violated § 226.34(a)(4)(i)(B). For examples of these and other variable rate loans, see comment 17(c)(1)–10.

Paragraph 34(a)(4)(i)(D).

1. *Failure to consider debt-to-income ratio.* A creditor is presumed to have violated the prohibition against lending without regard to repayment ability if the creditor has engaged in a pattern or practice of failing to consider the ratio of consumers' total debt obligations to consumers' income. For this purpose, a creditor may rely on the commentary to § 226.32(d)(7)(iii) to determine the components of debt and income. Unlike § 226.32(d)(7)(iii), however, § 226.34(a)(4)(i)(D) does not identify a specific debt to income ratio. Although a pattern of unusually high ratios may be evidence that a creditor has violated § 226.34(a)(4), compliance is determined on the basis of all the facts and circumstances relevant to repayment ability.

Paragraph 34(a)(4)(i)(E).

1. *Failure to consider residual income.* A creditor is presumed to have violated the prohibition against lending without regard to repayment ability if the creditor has engaged in a pattern or practice of failing to consider consumers' residual income. Paragraph (a)(4)(i)(E) requires a creditor to consider whether consumers will have sufficient income, after paying the new obligation and existing obligations, to cover ordinary living expenses.◄

* * * * *

►*Section 226.35—Acts or Practices in Connection With Higher-priced Mortgage Loans*

35(a) Coverage.

1. *In general.* To determine whether a loan is a higher-priced mortgage loan for purposes of the limitations set forth in this section, a creditor must use the rules for determining the applicable Treasury security set forth in § 226.35(a). (Note: these rules are different from the rules in § 226.32(a).)

2. *Treasury securities.* To determine the yield on comparable Treasury securities, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's ''Selected Interest Rates'' (statistical release H–15). Further guidance can be found in comments 35(a)(2)–1 and 35(a)(3)–1.

Paragraph 35(a)(2).

1. *In general.* Section 226.35(a)(2) sets forth the rules for identifying comparable Treasury securities for variable rate transactions. A variable rate transaction is one in which the annual percentage rate may increase after consummation. (See comment 226.18(f)–1. See also comments 226.17(c)(1)–8 and –10 for guidance on calculating the annual percentage rate for a variable rate transaction.) The rules in § 226.35(a)(2) apply to all variable rate transactions, regardless of whether the initial rate is a discounted or premium rate, or is determined by the index and margin used to make later adjustments. If the initial interest rate is fixed for more than one year, § 226.35(a)(2) requires the creditor to use the yield on the Treasury security matching the duration of the initial interest rate. For example—

i. In the case of a variable rate loan with an initial interest rate fixed for the first five years based on the value of the index at consummation plus the margin, and adjusting thereafter, a creditor would use the yield on the constant maturity of five years, such as published in the statistical release H–15;

ii. In the case of a variable rate loan with an initial interest rate that is a discounted or premium rate for the first five years and adjusts thereafter based on an index and margin, a creditor would use the yield on the constant maturity of five years published in the statistical release H–15;

iii. In the case of a variable rate loan, if the initial interest rate is fixed for the first four years (either at the value of the index at consummation plus margin or at a discounted or premium rate), and the statistical release H–15 does not report a constant maturity of four years but reports a maturity of three years and a maturity of five years, the creditor may use the yield from either maturity; and

iv. In the case of a variable rate loan, if the interest rate will adjust within the first year, the creditor would use the yield on the constant maturity of one year regardless of the length of any initial rate. For example, if the initial interest rate is fixed for one month and adjusts monthly thereafter, the creditor would use the yield on the constant maturity of one year.

Paragraph 35(a)(3).

1. *In general.* Section 226.35(a)(3) sets forth the rules for identifying yields on comparable Treasury securities for transactions other than variable rate transactions. Under these rules, for a transaction with a term of 30 years, the creditor would compare the APR to the yield on the constant Treasury maturity of ten years on statistical release H–15. For a transaction with a term of 15 years, the creditor would use the yield on the constant Treasury maturity of seven years. For a transaction with a term of five years, the creditor would use the yield on the constant Treasury maturity of five years.

2. *Balloon loans.* A creditor must look to the term of the loan regardless of the amortization period of the loan. For example, if a creditor extends a five-year ''balloon'' loan with payments based on a 30-year amortization, the creditor should use the yield on the constant Treasury maturity of five years.

Paragraph 35(a)(4).

1. *Application date.* An application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. See comment 226.19(a)(1)–3. An application transmitted through an intermediary agent or broker is received when it reaches the creditor, rather than when it reaches the agent or broker. See comment 19(b)–3 to determine whether a transaction involves an intermediary agent or broker.

2. *When 15th of the month is not a business day.* If the most recent 15th of the month is not a business day, the creditor must use the yield on the constant Treasury maturity as of the business day immediately preceding the 15th.

Paragraph 35(b)(2).

1. *Income and assets relied on.* A creditor must comply with § 226.35(b)(2)(i) with respect to the income and assets relied on in evaluating the creditworthiness of consumers. For example, if a consumer earns both a salary and an annual bonus, but the creditor only relies on the applicant's salary to evaluate creditworthiness, the creditor need only comply with § 226.35(b)(2)(i) with respect to the salary.

2. *Income and assets—co-applicant.* If two persons jointly apply for credit and both list income or assets on the application, the creditor must comply with § 226.35(b)(2) with respect to both applicants unless the creditor only relies on the income or assets of one of the applicants.

3. *Income and assets—guarantors.* A creditor does not need to comply with § 226.35(b)(2) with respect to the income or assets of a person who is not primarily liable on the obligation, such as a guarantor.

4. *Expected income.* A creditor may rely on a consumer's expected income, except equity income that would be realized from collateral, so long as the creditor verifies the basis for that expectation using documents listed under § 226.35(b)(2)(i), including third-party documents that provide reasonably reliable evidence of the borrower's expected income. For example, if, based on a consumer's statement, the creditor relies on an expectation that a consumer will receive an annual bonus, the creditor may verify the basis for that expectation with documents that show the consumer's past annual bonuses. Similarly, if the creditor relies on a consumer's expected salary following the consumer's receipt of an educational degree, the creditor may verify that expectation with a written statement from an employer indicating that the consumer will be employed upon graduation and the salary.

Paragraph 35(b)(2)(i).

1. *Internal Revenue Service (IRS) Form W–2.* A creditor may verify a consumer's income using an IRS Form W–2 (or any subsequent revisions or similar IRS Forms used for reporting wages and tax withholding). The lender may also use an electronic retrieval service for obtaining the consumer's W–2 information.

2. *Tax returns.* A creditor may verify a consumer's income or assets using the consumer's tax return. A creditor may also use IRS Form 4506 ''Request for Copy of Tax Return,'' Form 4506–T ''Request for Transcript of Tax Return,'' or Form 8821 ''Tax Information Authorization'' (or any subsequent revisions or similar IRS Forms appropriate for obtaining tax return information directly from the IRS) to verify the consumer's income or assets. The lender

may also use an electronic retrieval service for obtaining tax return information.

3. *Other third-party documents that provide reasonably reliable evidence of consumer's income or assets.* Creditors may verify income and assets using other documents produced by third parties that provide reasonably reliable evidence of the consumer's income or assets. For example, creditors may verify the consumer's income using receipts from a check-cashing service, or by obtaining a written statement from the consumer's employer that states the consumer's income.

4. *Duplicative collection of documentation.* A creditor that has made a loan to a consumer and is refinancing or extending new credit to the same consumer need not collect from the consumer a document the creditor previously examined if that document presumably will not have changed since it was initially collected. For example, if the creditor has collected the consumer's 2006 tax return to make a loan in May 2007, the creditor may rely on the 2006 tax return if the creditor makes another loan to the same consumer in August 2007. Using the same example, if the creditor has collected the consumer's bank statement for May 2007 in making the first loan, the creditor may rely on that bank statement for that month in making the subsequent loan in August.

Paragraph 35(b)(2)(ii).

1. *No violation if income or assets relied on were not materially greater than verifiable amounts.* A creditor must verify amounts of income or assets relied upon in extending credit for a higher-priced mortgage loan. However, the creditor does not violate § 226.35(b)(2) if it demonstrates that the income or assets relied upon were not materially greater than the amounts that the creditor would have been able to verify pursuant to § 226.35(b)(2)(i) at consummation. For example, if a creditor approves an extension of credit relying on a consumer's annual income of $40,000 but fails to obtain documentation of that amount before extending the credit, the creditor will not have violated this section if the creditor later obtains evidence that would satisfy § 226.35(b)(2)(i), such as tax return information, showing that the consumer had an annual income of at least $40,000 at the time the loan was consummated.◄

►*Section 226.36—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Principal Dwelling*

36(a) Creditor payments to mortgage brokers.

Paragraph 36(a)(1).

1. *Timing of agreement.* The agreement under § 226.36(a)(1) must be entered into by the consumer and mortgage broker before the consumer pays a fee to any person or submits a written application for the credit transaction to the broker, whichever occurs first. The agreement must be entered into before the consumer's payment of any fee, regardless of whether the fee is received or retained by the broker. The agreement also must be entered into before the consumer submits a written application for the credit transaction to the broker.

2. *Written agreement.* The agreement under § 226.36(a)(1) must be in writing and must be a legally enforceable contract under applicable law. As evidence of compliance with this section, a creditor may rely on a written agreement that meets the criteria set forth in § 226.36(a)(1)(i)–(iii) and is signed and contemporaneously dated by the consumer and the broker, together with documentation (such as the HUD–1 Settlement Statement prepared in accordance with RESPA) that the creditor's payment to a broker does not exceed the amount provided for in the written agreement, taking into account any portion of that amount received by the broker directly from the consumer or out of loan proceeds.

3. *Clear and conspicuous.* The three statements required by § 226.36(a)(1)(i)–(iii) are clear and conspicuous if they are noticeable, grouped together, and prominently placed on the first page of the written agreement. They are noticeable if they are at least as large as the largest type size used in the rest of the agreement's text. This standard also requires that the statements be reasonably understandable. The following example would be considered reasonably understandable: ''The total fee I/we will receive for your loan is $ _____. You will pay this entire amount. The lender will increase your interest rate if the lender pays any part of this amount. A lender payment to a mortgage broker can influence which loan products and terms the broker offers you, which may not be in your best interest or may be less favorable than you otherwise could obtain.''

Paragraph 36(a)(1)(i).

1. *Total amount of broker's compensation.* The agreement must set forth the total compensation the mortgage broker will receive and retain as a dollar amount. The broker's total compensation stated in the agreement is limited to amounts that the broker both receives and retains. It does not include amounts received by the broker and paid to third parties for other services obtained in connection with the transaction, such as a fee for an appraisal or inspection, provided such amounts actually are paid to and retained by third parties.

Paragraph 36(a)(2).

1. *Effect of section.* Section 226.36(a)(2) provides two exceptions to the general rule in § 226.36(a)(1). Creditor payments to mortgage brokers that qualify for either exception are not subject to the prohibition on creditor payments to mortgage brokers. Accordingly, in such cases, the agreement prescribed by § 226.36(a)(1) is not required.

Paragraph 36(a)(2)(i).

1. *State statute or regulation.* A state statute or regulation may impose a specific duty on mortgage brokers, under which a broker may not offer loan products or terms that are less favorable than the consumer otherwise could obtain through the same broker, assuming the same loan terms and conditions. For example, such a law may impose a duty on brokers to act solely in the consumer's best interests. Where brokers are subject by law to such a duty, and the applicable statute or regulation requires brokers to provide consumers with a written agreement that describes the broker's role and relationship to the consumer, § 226.36(a)(1) does not apply.

Paragraph 36(a)(2)(ii).

1. *Compensation not determined by reference to interest rate.* Where a creditor can demonstrate that the compensation it pays to a mortgage broker is not based on the interest rate for the transaction, § 226.36(a)(1) does not apply. This exception would be available, for example, if a creditor can show that it pays brokers the same flat fee for all transactions, regardless of the interest rate. Under this exception, unlike the general rule of § 226.36(a)(1), no part of the broker's compensation may be based on the interest rate, even if the consumer is aware of the relationship and agrees to it. Creditor payments to brokers may vary, however, based on factors other than the interest rate (such as loan principal amount) without losing this exception.

36(b) Misrepresentation of value of consumer's principal dwelling.

36(b)(2) When extension of credit prohibited.

1. *Reasonable diligence.* A creditor will be deemed to have acted with reasonable diligence under § 226.36(b)(2) if the creditor extends credit based on an appraisal other than the one subject to the restriction in § 226.36(b)(2).

36(c) Mortgage broker defined.

1. *Meaning of mortgage broker.* Section 226.36(c) provides that a mortgage broker is any person who for compensation or other monetary gain arranges, negotiates, or otherwise obtains an extension of consumer credit, but is not an employee of a creditor. In addition, this definition expressly includes any person that satisfies this definition but makes use of ''table funding.'' Table funding occurs when a transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although § 226.2(a)(17)(1)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, § 226.36(c) provides that, solely for the purposes of § 226.36, such a person is considered a mortgage broker. In addition, although consumers themselves often arrange, negotiate, or otherwise obtain extensions of consumer credit on their own behalf, they do not do so for compensation or other monetary gain and, therefore, are not mortgage brokers under this section.

36(d) Servicing practices.

Paragraph 36(d)(1)(i).

1. *Crediting of payments.* Under § 226.36(d)(1)(i), a mortgage servicer must credit a payment to a consumer's loan account as of the date of receipt. This does not require that a mortgage servicer post the payment to the consumer's loan account on a particular date; the servicer is only required to credit the payment *as of* the date of receipt. Accordingly, a servicer that receives a payment on or before its due date and does not enter the payment on its books or in its system until after the payment's due date does not violate this requirement as long as the entry does not result in the imposition of a late charge, additional interest, or similar penalty to the consumer, or in the reporting

of negative information to a consumer reporting agency.

2. *Date of receipt*. The ''date of receipt'' is the date that the payment instrument or other means of payment reaches the mortgage servicer. For example, payment by check is received when the mortgage servicer receives it, not when the funds are collected. 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 mortgage servicer receives the third-party payor's check or other transfer medium, such as an electronic fund transfer.

Paragraph 36(d)(1)(ii).

1. *Pyramiding of late fees*. The prohibition on pyramiding of late fees in this subsection should be construed consistently with the ''credit practices rule'' of Regulation AA, 12 CFR 227.15.

Paragraph 36(d)(1)(iii).

1. *Fees and charges imposed by the servicer*. The schedule of fees and charges must include any third-party fees or charges assessed on the consumer by the servicer.

2. *Provision of schedule to consumer*. The servicer may provide the schedule to the consumer in writing or it may direct the consumer to a specific website address where the schedule is located. Any such website address reference must be specific enough to inform the consumer where the schedule is located, rather than solely referring to the servicer's home page.

3. *Dollar amount of fees and charges*. The dollar amount of a fee or charge may be expressed as a flat fee or, if a flat fee is not feasible, an hourly rate or percentage.

Paragraph 36(d)(1)(iv).

1. *Reasonable time*. The payoff statement must be provided to the consumer, or person acting on behalf of the consumer, within a reasonable time after the request. For example, it would be reasonable under normal market conditions to provide the statement within three business days of a consumer's request. This timeframe might be extended, for example, when the market is experiencing an unusually high volume of refinancing requests.

2. *Person acting on behalf of the consumer*. For purposes of § 226.36(d)(1)(iv), a person acting on behalf of the consumer may include the consumer's representative, such as an attorney representing the individual in pre-foreclosure or bankruptcy proceedings, a non-profit consumer counseling or similar organization, or a lender with which the consumer is refinancing and which requires the payoff statement to complete the refinancing.

Paragraph 36(d)(2).

1. *Payment requirements*. The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be prohibited, however, from specifying payment by preauthorized electronic fund transfer. (*See* section 913 of the Electronic Fund Transfer Act.)

2. *Implied guidelines for payments*. In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer's normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed.►

By order of the Board of Governors of the Federal Reserve System, December 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–25058 Filed 1–8–08; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Wednesday,
January 9, 2008

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0526; FRL–8508–6]

RIN 2060–AN21

National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for area sources engaged in paint stripping, surface coating of motor vehicles and mobile equipment, and miscellaneous surface coating operations. EPA has listed ''Paint Stripping,'' ''Plastic Parts and Products (Surface Coating),'' and ''Autobody Refinishing Paint Shops'' as area sources of hazardous air pollutants (HAP) that contribute to the risk to public health in urban areas under the Integrated Urban Air Toxics Strategy. This final rule includes emissions standards that reflect the generally available control technology or management practices in each of these area source categories. ''Plastic Parts and Products (Surface Coating)'' has been renamed ''Miscellaneous Surface Coating,'' and ''Autobody Refinishing Paint Shops'' has been renamed ''Motor Vehicle and Mobile Equipment Surface Coating'' to more accurately reflect the scope of these source categories.

DATES: This final rule is effective on January 9, 2008. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 9, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0526. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information concerning the paint stripping standards, contact Mr. Warren Johnson, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5124, or e-mail at *Johnson.warren@epa.gov.* For technical information concerning the surface coating standards, contact Ms. Kim Teal, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5580, or e-mail at *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by the rule are paint stripping operations using methylene chloride (MeCl)-containing paint strippers, motor vehicle and mobile equipment surface coating operations, and miscellaneous surface coating operations located at area sources. An area source is defined in the Clean Air Act (CAA) section 112(a) as any stationary source of HAP that is not a major source, and a major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP.

For the purposes of this rule, paint stripping operations are those that perform paint stripping using MeCl for the removal of dried paint (including, but not limited to, paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates at area sources as either:

(1) an independent activity where paint stripping is the principal activity at the source, or

(2) an activity incidental to the principal activity (e.g., surface coating, inspection, maintenance, etc.) at the source.

For co-located operations, EPA considers paint stripping activities that use one ton or less to be incidental to the principal activity and those using more than one ton to be performing paint stripping as a principal activity.

Motor vehicle and mobile equipment surface coating operations involve the spray application of coatings at area sources to automobiles, light trucks, heavy duty trucks, buses, construction equipment, self-propelled vehicles and equipment that may be drawn and/or driven on a roadway.

Miscellaneous surface coating operations are those that involve the spray application of coatings that contain compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni), or cadmium (Cd), herein after referred to as target HAP, to miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic.

In general, the facilities and entities potentially affected by some or all of the rule are covered under the North American Industrial Classification System (NAICS) codes listed in the following table. However, facilities classified under other NAICS codes may be subject to the standards if they meet the applicability criteria.

Category	NAICS	Examples of potentially regulated entities
Aerospace Equipment	336413, 336414, 336415, 54171	Aircraft engines, aircraft parts, aerospace ground equipment.
Automobiles and Automobile Parts	336111, 336211, 336312, 33632, 33633, 33634, 33637, 336399, 441110, 441120, 811121.	Engine parts, vehicle parts and accessories, brakes, axles, etc. Motor vehicle body manufacturing and automobile assembly plants. New and used car dealers. Automotive body, paint, and interior repair and maintenance.
Chemical Manufacturing and Product Preparation.	325110, 325120, 325131, 325188, 325192, 325193, 325199, 325998.	Petrochemicals, Industrial Gases, Inorganic Dyes and Pigments, Basic Inorganic and Organic Chemicals, Cyclic Crude and Intermediates, Ethyl Alcohol, Miscellaneous Chemical Production and Preparation.
Extruded Aluminum	331316, 331524, 332321, 332323	Extruded aluminum, architectural components, coils, rod, and tubes.
Government	Not Applicable	Government entities, besides Department of Defense, that maintain vehicles, such as school buses, police and emergency vehicles, transit buses, or highway maintenance vehicles.
Heavy Equipment	33312, 333611	Tractors, earth moving machinery.
Job Shops	332722, 332813, 332991, 334119, 336413, 339999.	Manufacturing industries not elsewhere classified (e.g., bezels, consoles, panels, lenses).
Large Trucks and Buses	33612, 336211	Large trucks and buses.
Metal Buildings	332311	Prefabricated metal buildings, carports, docks, dwellings, greenhouses, panels for buildings.
Metal Containers	33242, 81131, 322214, 331513	Drums, kegs, pails, shipping containers.
Metal Pipe and Foundry	331111, 331513, 33121, 331221, 331511.	Plate, tube, rods, nails, etc.
Rail Transportation	33651, 336611, 482111	Brakes, engines, freight cars, locomotives.
Recreational Vehicles and Other Transportation Equipment.	321991, 3369, 331316, 336991, 336211, 336112, 336212, 336213, 336214, 336399, 336999, 33635, 56121, 8111, 56211.	Mobile Homes. Motorcycles, motor homes, semi trailers, truck trailers. Miscellaneous transportation related equipment and parts. Travel trailer and camper manufacturing.
Rubber-to-Metal Products	326291, 326299	Engine mounts, rubberized tank tread, harmonic balancers.
Structural Steel	332311, 332312	Joists, railway bridge sections, highway bridge sections.
Waste Treatment, Disposal, and Materials Recovery.	562211, 562212, 562213, 562219, 562920.	Hazardous Waste Treatment and Disposal, Solid Waste Landfill, Solid Waste Combustors and Incinerators, Other Nonhazardous Waste Treatment and Disposal, Materials Recovery.
Other Industrial and Commercial	211112	Natural Gas Liquid Extraction.
	311942	Spices and Extracts.
	331311	Alumina Refining.
	337214, 811420	Office furniture, except wood. Reupholstery and Furniture Repair.
	325211	Plastics Material Synthetic Resins, and Nonvulcanizable Elastomers.
	325510	Paint and Coating Manufacturing.
	32614, 32615	Plastic foam products (e.g., pool floats, wrestling mats, life jackets).
	326199	Plastic products not elsewhere classified (e.g., name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	333313	Office machines.
	33422	Radio and television broadcasting and communications equipment (e.g., cellular telephones).
	339111, 339112	Medical equipment and supplies.
	33992	Sporting and athletic goods.
	33995	Signs and advertising specialties.
	336612	Boat building.
	713930	Marinas, including boat repair yards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the rule. Many types of entities that perform stripping and/or coating that are not listed in this table would be potentially affected by the rule. Additionally, some entities that are classified under the NAICS codes in the table may not be subject if they are not performing the operations described in the applicability criteria in §§ 63.11169 and 63.11170 of the rule. To determine whether your facility, company, business, organization, etc., is subject to this action, you should examine the applicability criteria in §§ 63.11169 and 63.11170 of the rule. If you have any

questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). A copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 10, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP, which, as the result of emissions of area sources, pose the greatest threat to public health in urban areas. Consistent with this provision, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas in 1999. These HAP are referred to as the ''Urban HAP'' as part of the Integrated Urban Air Toxics Strategy. See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[1] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. See *Sierra Club* v. *Johnson*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3).

Among other things, the order as amended on October 15, 2007, requires that, by December 15, 2007, EPA complete standards for nine area source categories. On September 17, 2007, EPA proposed NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources. The proposal covered the following three listed area source categories that were selected to meet the December 15, 2007, deadline: (1) Paint Stripping, (2) Plastic Parts and Products (Surface Coating), and (3) Autobody Refinishing Paint Shops. See 72 FR 52958. This final NESHAP completes the required regulatory action for three area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies (GACT) or management practices by such sources to reduce emissions of hazardous air pollutants.'' As explained in the proposed NESHAP, EPA is setting standards for these area source categories pursuant to section 112(d)(5). See 72 FR 52958, September 17, 2007.

III. Summary of Final Rule

A. Applicability

We have revised the rule since proposal to clarify the sources to which it applies. In order to clarify the applicability of the final rule and the standards that apply, §§ 63.11169 and 63.11170 of the final rule distinguish among the three separate area source categories: paint stripping, motor vehicle and mobile equipment surface coating, and miscellaneous surface coating. The rule contains separate provisions describing the requirements for each category.

The final subpart does not apply to any of the following activities listed in § 63.11169:

(1) Surface coating or paint stripping performed on site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any State), the National Aeronautics and Space Administration, or the National Nuclear Security Administration.

(2) Surface coating or paint stripping of military munitions, as defined in § 63.11180, manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any State) or equipment directly and exclusively used for the purposes of transporting military munitions.

(3) Surface coating or paint stripping performed by individuals on their personal vehicles, possessions, or property, either as a hobby or for maintenance of their personal vehicles, possessions, or property. This subpart also does not apply when these operations are performed by individuals for others without compensation. An individual who spray applies surface coating of more than two motor vehicles or pieces of mobile equipment per year is subject to the requirements in this subpart that pertain to motor vehicle and mobile equipment surface coating regardless of whether compensation is received.

(4) Surface coating or paint stripping that meets the definition of ''research and laboratory activities'' in § 63.11180 of the final rule.

(5) Surface coating or paint stripping that meets the definition of ''quality control activities'' in § 63.11180 of the final rule.

(6) Surface coating or paint stripping that is specifically covered by another area source NESHAP.

Section 63.11170 specifies the operations that are subject to the final standards. For paint stripping, the final rule applies to you if you use chemical strippers that contain MeCl to remove dried paint (including, but not limited to, paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates.

The final rule also applies to you if you spray apply coatings to motor vehicles or mobile equipment for the purposes of finishing or refinishing, and clarifies that the standards apply to all sources performing these operations using spray-applied coatings, including mobile refinishing operations, except those operations that meet the definition of facility maintenance in § 63.11180. Finally, the rule applies if you spray apply coatings that contain the target HAP to plastic or metal parts and products (other than motor vehicles and mobile equipment), except those operations that meet the definition of facility maintenance or that are surface coating of a space vehicle. If you perform miscellaneous surface coating operations, but do not use any coatings

[1] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

that contain the target HAP, the rule does not apply.

The final rule applies to all motor vehicle and mobile equipment surface coating operations. However, if you are the owner or operator of a motor vehicle or mobile equipment surface coating operation, you may petition the Administrator for an exemption from this subpart if you can demonstrate, to the satisfaction of the Administrator, that you spray apply no coatings that contain the target HAP. Petitions must include a description of the coatings that you spray apply and your certification that you do not spray apply any coatings containing the target HAP. If circumstances change such that you intend to spray apply coatings containing the target HAP, you must submit the initial notification required by 63.11175 and comply with the requirements of this subpart.

Coatings are considered to contain the target HAP if they contain any individual target HAP that is an Occupational Safety and Health Administration (OSHA)–defined carcinogen as specified in 29 CFR 1910.1200(d)(4) at a concentration greater than 0.1 percent by mass or greater than 1.0 percent by mass for any other individual target HAP. For the purpose of determining whether materials you use contain the target HAP (that is, compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni), or cadmium (Cd)), you may rely on formulation data provided by the manufacturer or supplier, such as the material safety data sheet (MSDS), as long as it represents each target HAP compound in the material that is present at 0.1 percent by mass or more for OSHA-defined carcinogens and at 1.0 percent by mass or more for other target HAP compounds.

The final rule also includes in § 63.11180 definitions of ''administrator,'' ''coating,'' ''facility maintenance,'' ''quality control activities,'' ''research and laboratory activities,'' ''space vehicle,'' and ''spray application of coatings'' related to these applicability provisions.

''Administrator'' means the Administrator of the U.S. Environmental Protection Agency or the State or local agency that is granted delegation for implementation of this subpart.

''Coating'' is defined as a material spray-applied to a substrate for decorative, protective, or functional purposes. As specified in the definition in the final rule, ''coating'' does not include the following materials:

(1) Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances.

(2) Paper film or plastic film that may be pre-coated with an adhesive by the film manufacturer.

(3) Adhesives, sealants, maskants, or caulking materials.

(4) Temporary protective coatings, lubricants, or surface preparation materials.

(5) In-mold coatings that are spray-applied in the manufacture of reinforced plastic composite parts.

''Facility maintenance'' is defined to include architectural surface coating activities on stationary structures and process equipment. It is also defined to include the surface coating of mobile equipment in the field, such as farming or mining equipment, or mobile equipment coated at a site where it is used, such as a fork truck coated at a manufacturing facility. The definition of facility maintenance specifically excludes surface coating of motor vehicles, mobile equipment, or items that routinely leave and return to the facility, such as delivery trucks, rental equipment, or containers used to transport or deliver products to customers, such as compressed gas canisters. The surface coating of these items (e.g., courier vehicles or compressed gas canisters) that routinely leave and return to the facility will be subject to the standards.

''Quality control activities'' has been defined to mean surface coating or paint stripping activities that meet all of the following criteria:

(1) The activities, associated with a surface coating or paint stripping operation, to detect and correct defects in the final product through selection of limited samples from the operation, and comparison of the samples against specific performance criteria.

(2) The activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; for example, parts that are surface coated or stripped are not sold.

(3) The activities are not a normal part of the miscellaneous surface coating or paint stripping operation, e.g., they do not include color matching activities performed on motor vehicles as part of collision repair activities.

(4) The activities do not involve surface coating or stripping of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity, e.g., the activities are not facility maintenance.

''Research and laboratory activities'' has been defined to mean surface coating or paint stripping activities whose primary purpose is to conduct research and development into new processes and products, that are performed under the close supervision of technically trained personnel and do not include the manufacture of intermediate or final products for commercial sale in commerce. Such activities are ordinarily conducted in a dedicated area of a facility (such as a dedicated room or paint booth), or in a separate facility. Research and laboratory activities include, but are not limited to the following:

(1) Activities conducted to develop more efficient production processes, including alternative paint stripping or surface coating materials or application methods, or methods for preventing or reducing adverse environmental impacts.

(2) Activities conducted at a laboratory to analyze air, soil, water, waste, or product samples for contaminants or environmental impact or to develop revised production processes to limit environmental effects.

''Space Vehicle'' has been defined to mean vehicles designed to travel beyond the limit of the earth's atmosphere, such as satellites, space stations, and the Space Shuttle System (including orbiter, external tanks, and solid rocket boosters).

''Spray-applied coating operations'' has been defined to mean coatings that are applied using a hand-held device that creates an atomized mist of coating and deposits the coating on a substrate. As specified in the definition in the final rule, the following materials or activities are not considered spray-applied coatings:

(1) Coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters (cc)).

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens.

(3) Thermal spray operations (also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names) in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact.

B. Compliance Dates

New sources must comply with the requirements of the final rule upon startup of operations, but no earlier than the effective date of this notice. Existing sources must comply no later than three years from the effective date of this notice.

C. Requirements for Paint Stripping Operations

All owners and operators of regulated sources conducting paint stripping and using MeCl-containing paint stripper must implement management practices that reduce emissions of MeCl by minimizing evaporative losses of MeCl. The MeCl management practices involve only using a MeCl-containing paint stripper when an alternative on site stripping method or material is incapable of accomplishing the work as determined by the operator. Alternative methods to reduce MeCl usage may include:

(1) Non- or low-MeCl-containing chemical strippers;

(2) Mechanical stripping;

(3) Blasting (including dry or wet media); or

(4) Thermal and cryogenic decomposition.

The management practices required also include optimizing stripper application conditions, reducing exposure of stripper to the air, and practicing proper storage and disposal of materials containing MeCl. Owners and operators must also maintain records of annual usage of strippers containing MeCl.

In addition to the management practices, sources that use more than one ton of MeCl per year need to develop and implement a MeCl minimization plan. This must be a written plan including criteria to evaluate the necessity of MeCl in the stripping operations and whether alternatives are feasible. It must also describe the management techniques that will be used to minimize MeCl emissions when MeCl is needed in the paint stripping operation.

The MeCl minimization plan evaluation criteria involves only using a MeCl-containing paint stripper when an alternative on site stripping method or material is incapable of accomplishing the work as determined by the operator. Alternative methods to reduce MeCl usage may include:

(1) Non- or low-MeCl-containing chemical strippers;

(2) Mechanical stripping;

(3) Blasting (including dry or wet media); or

(4) Thermal and cryogenic decomposition.

The management practices required to be contained in the plan include optimizing stripper application conditions, reducing exposure of stripper to the air, and practicing proper storage and disposal of materials containing MeCl. Sources are required to notify either EPA or the delegated State permit authority that they have developed a MeCl minimization plan, keep a written copy of the plan on site and post a placard or sign outlining the evaluation criteria and management techniques in each area where MeCl-containing paint stripping operations occur. They are also required to review the plan annually and update it based on the experiences of the previous year or the availability of new methods of stripping and to keep a record of the review and changes made to the plan on file.

D. Requirements for Surface Coating Operations

All motor vehicle and mobile equipment surface coating operations and those miscellaneous surface coating operations that spray apply coatings containing the target HAP must apply the coatings with a high volume, low pressure (HVLP) spray gun, electrostatic spray gun, airless spray gun, air-assisted airless spray gun, or a gun demonstrated to be equal in transfer efficiency to an HVLP spray gun. All spray-applied coatings must be applied in a prep station or spray booth. For motor vehicle and mobile equipment surface coating, prep stations and spray booths that are large enough to hold a complete vehicle must have four complete side walls or curtains and a complete roof. For motor vehicle and mobile equipment subassemblies and for miscellaneous surface coating, coatings must be spray applied in a booth with a full roof and at least three walls or side curtains. Openings are allowed in the sidewalls and roof of booths used for miscellaneous surface coating to allow for parts conveyors, if needed. The exhaust from the prep station or spray booth must be fitted with filters demonstrated to achieve at least 98 percent filter efficiency of paint overspray.

Additionally, surface coating sources subject to the standards are required to comply with management practices by demonstrating that:

(1) All painters that spray apply coatings have completed training in techniques to minimize paint overspray, and

(2) That no spray gun cleaning is performed by spraying solvent through the gun creating an atomized mist (i.e., spray guns are cleaned in an enclosed spray gun cleaner or by cleaning the disassembled gun parts by hand).

Initial painter training will be valid for a period of five years, and refresher training must be repeated at least once every five years. Painters that completed training in the last five years before the compliance date will be able to use that training to satisfy this requirement. To comply with the painter training requirements, all spray painters at new sources must complete training no later than 180 days after hiring or 180 days from the date of this notice, whichever is later. All spray painters at existing sources must complete training no later than three years from the date of this notice or no later than 180 days after hiring, whichever is later.

The initial and refresher training must address the following topics to reduce coating overspray and emissions:

(1) Spray gun equipment selection, set up, and operation, including measuring coating viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.

(2) Spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.

(3) Routine spray booth and filter maintenance, including filter selection and installation.

(4) Environmental compliance with the requirements of this subpart.

E. Notifications, Recordkeeping, and Reporting

All sources must submit an initial notification to the EPA or to their State or local air pollution control agency, if the EPA has delegated authority for implementing this rule to that agency, with a copy sent to EPA, unless the EPA regional office has waived the dual reporting requirements. New sources need to submit the initial notification no later than 180 days after initial startup, or no later than 180 days after the date of this notice, whichever is later. Existing sources need to submit the initial notification no later than one year before their compliance date. For new sources, the initial notification will also serve as a notification on whether the source is in compliance. For existing sources, the initial notification must indicate whether the source is already in compliance or that it will be brought into compliance by the existing source compliance date.

Additionally, all existing sources that did not state in their initial notification that they were already in compliance with the management practices and equipment requirements prescribed in the final rule must also submit a notification of compliance status. The notification of compliance status must be submitted no later than 60 days after the compliance date for existing sources. The notification of compliance status must certify that the source is in compliance with the applicable requirements for the activities being performed.

The initial notification must include the following information:

(1) The name, address, phone number and e-mail address (if available) of the owner and operator.

(2) The address (physical location) of the affected source. If the source is a motor vehicle or mobile equipment surface coating operation that repairs vehicles at the customer's location, rather than at a fixed collision repair shop, the notification should state this and indicate the physical location where records are kept to demonstrate compliance.

(3) A statement that the source is subject to this standard, 40 CFR part 63, subpart HHHHHH.

(4) A brief description of the type of operation, including which types of activities are performed at the source (miscellaneous surface coating, motor vehicle and mobile equipment surface coating, or paint stripping). For surface coating operations, identify the number of spray booths and the number of painters usually employed at the operation. For paint stripping, identify the method(s) of paint stripping employed (e.g., chemical, mechanical) and the substrates stripped (e.g., wood, plastic, metal).

(5) Each paint stripping operation must indicate whether they plan to annually use more than one ton of MeCl after the compliance date.

Sources are only required to submit an annual report to the EPA or to their State or local air pollution control agency if any information in the initial notification, notification of compliance status report, or in a previous annual report has changed in the previous calendar year. If an annual report is needed, it must be submitted no later than 60 days after the yearly anniversary of the compliance date.

All sources must keep records sufficient to demonstrate that they are in compliance at all times. These include the following:

(1) Records that each spray painter has completed the training, with the date of the initial training and the most recent refresher training.

(2) Documentation of the filter efficiency of any spray booth exhaust filter material, such as data from the filter manufacturer.

(3) Documentation from the spray gun manufacturer that each spray gun that does not meet the definition of an HVLP spray gun, electrostatic spray gun, airless spray gun, or air-assisted airless spray gun has been demonstrated to achieve a transfer efficiency equal to one of the other allowed types of spray gun.

(4) Copies of any notifications or reports that were submitted.

(5) Records of paint strippers containing MeCl used for paint stripping operations, including the MeCl content of the paint stripper used, and annual usage.

(6) If you are a paint stripping source that annually uses more than one ton of MeCl, a record of your current MeCl minimization plan, and records of your annual review of, and updates to, your MeCl minimization plan.

(7) Records of any deviation from the requirements in the final rule, including the date and time period of the deviation, and a description of the nature of the deviation and the actions taken to correct the deviation.

(8) Records of any assessments of source compliance performed in support of the initial notification, notification of compliance status, or annual notification of changes report.

Under the final rule, owners and operators will not be required to obtain a Title V operating permit under 40 CFR part 70 or 71, provided they are not required to obtain a permit for another reason, even though the source is an area source.

IV. Summary of Changes Since Proposal

A. Applicability

We have revised the rule since proposal to clarify the scope of the source category to which it applies, and to clearly identify the sources subject to the requirements of the rule. These revisions make clear that the affected source category is not as broad as could have been interpreted based on the language of the proposed rule. These changes were made in both the applicability sections (§§ 63.11169 to 63.11171) and to the definitions in § 63.11180 that describe particular operations that are subject to the standards.

We have revised § 63.11169 to specify that compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni), and cadmium (Cd) are the HAP for which the surface coating standards for miscellaneous surface coating operations category was listed and which the standards are designed to control. In subsequent sections of the rule, certain provisions apply only to surface coating operations that are sources of these target HAP.

We have revised § 63.11170 to separate and more clearly explain how the rule applies to paint stripping, motor vehicle and mobile equipment surface coating, and miscellaneous surface coating. In particular, motor vehicle and mobile equipment surface coating has been separated from the larger category of miscellaneous surface coating and is treated separately in the rest of the rule. In the proposed rule, all surface coating was included under a single set of requirements that made no distinction between motor vehicle and mobile equipment surface coating and all other miscellaneous surface coating.

The National Nuclear Security Administration (NNSA) has been added to the list of installations to which this subpart does not apply. This list is found in § 63.11169. Surface coating and paint stripping at NNSA installations would be regulated by the military surface coating NESHAP that is under development.

Section 63.11169 has also been revised to specify that these standards do not apply to paint stripping and surface coating performed by individuals as part of a hobby, or for maintenance of their personal vehicles, possessions, and property, or when they perform these activities for others without compensation.

For motor vehicle and mobile equipment surface coating, all sources and individuals that spray finish more than two motor vehicles or pieces of mobile equipment per year are subject to the requirements in the final rule that pertain to motor vehicle and mobile equipment surface coating regardless of whether compensation is received. However, we have included a provision in the final rule that allows an owner or operator of a motor vehicle or mobile equipment surface coating operation to petition the Administrator for an exemption from this subpart if the owner or operator can demonstrate that they spray apply no coatings that contain the target HAP. Petitions must include a description of the coatings that they spray apply and certification that they do not spray apply any coatings containing the target HAP. If circumstances change such that the owner or operator intends to spray apply coatings containing the target HAP, the owner or operator must submit

the initial notification required by 63.11175 and comply with the requirements of this subpart. While the proposed rule would have required all motor vehicle and mobile equipment surface coating operations to comply with the requirements of the rule, because the category was listed for the target HAP, it is appropriate to allow operations that do not use products containing the target HAP to request that the rule not apply to them based on an adequate demonstration that they do not use such products. EPA's understanding, based on site visits and communications with the industry, is that many shops, especially smaller ones, purchase coatings ''over the counter'' on a retail basis and usually do not receive composition data, such as a material safety data sheet (MSDS), with these coatings. In addition, when a specific color is needed for refinishing a vehicle, it is usually custom-mixed from any number of about 50 different toners, either by the painter at the shop, or by the coating retailer. Therefore, it will likely be very difficult to determine whether any particular coating being sprayed contains the target HAP, unless the HAP composition of all coatings within the shop is known. For this reason, and because we received comments from industry supporting the proposed requirements, we expect that few, if any, petitions will be received. We hope to encourage reformulation where possible through this provision.

The applicability language in § 63.11169 in the final rule has been revised to exclude paint stripping and surface coating that meets the definition of research and laboratory activities, and quality control activities, as defined in § 63.11180.

The applicability language in § 63.11170 for motor vehicle and mobile equipment surface coating operations has been revised to clarify that the standards apply to all sources that spray apply these coatings, including mobile refinishing operations, except when they qualify as facility maintenance, as defined in § 63.11180.

The applicability language for miscellaneous surface coating operations has been revised to clarify the scope of the source category subject to regulation. First, the standards apply to the spray application of only coatings that contain the target HAP at miscellaneous surface coating operations. Second, language has been added to clarify that the standards apply only to plastic and metal substrates. Third, the rule has been revised to also exclude miscellaneous surface coating that meets the definition of ''facility maintenance.'' Finally, surface coating on space vehicles has been specifically excluded so as to parallel the applicability of subpart GG, the major source NESHAP for Aerospace Manufacturing and Rework Facilities.

The applicability of the final rule has been further clarified by revising or adding definitions to § 63.11180 that better explain the operations that are covered. The definition of ''coating'' was revised to clarify that the following are not coatings subject to this rule:

(a) Adhesives, sealants, maskants, or caulking materials.

(b) Temporary protective coatings, lubricants, or surface preparation materials.

(c) In-mold coatings that are spray-applied in the manufacture of reinforced plastic composite parts.

New definitions were added for ''facility maintenance'', ''quality control activities'', ''research and laboratory activities'', and ''spray-applied coating.'' These definitions were fully described in section III.A of this preamble.

B. Compliance Dates

The compliance date for existing sources has been extended from two years to three years after the effective date of today's final rule notice.

C. Requirements for Paint Stripping Operations

The format of the MeCl minimization plan threshold for the paint stripping portion of the rule has been revised from total stripper volume usage to MeCl mass usage for several reasons. First, EPA believes it is more appropriate to address the emissions directly, when possible, in lieu of using a surrogate that may or may not accomplish the goal. Additionally, a mass usage format may serve as an incentive for sources to evaluate the appropriate MeCl content of their chemical strippers and also provide the sources with greater flexibility. The rule sets the MeCl minimization plan threshold at one ton per year of MeCl contained in paint strippers.

D. Requirements for Surface Coating Operations

The rule has been revised to create separate categories for motor vehicle and mobile equipment surface coating and for miscellaneous surface coating. For motor vehicle and mobile equipment surface coating, the requirements for painter training, high efficiency spray guns (e.g., HVLP or equivalent), spray booths with filters, and gun washing still apply to all sources as described in the applicability section of the rule.

For miscellaneous surface coating operations, the rule has been revised so that it applies only to those surface coating operations that spray apply coatings that contain the target HAP; other surface coating operations do not need to comply with those requirements. Miscellaneous surface coating operations that spray apply coatings that contain the target HAP must meet the same requirements as motor vehicle and mobile equipment surface coating operations.

The spray painter training requirements have been revised so that training is not required on those topics that do not have a direct effect on emissions reductions. More detail has been added on the topics that impact emissions reductions (e.g., transfer efficiency) and for which training is required. The training requirements have also been revised to allow an owner or operator to certify that their employees have completed training to facilitate the use of in-house training programs. Spray painters will also have 180 days to complete training after hiring or transferring to a surface coating job, instead of 60 days.

The requirements for spray guns have been revised to allow the use of airless or air-assisted airless spray guns without having to demonstrate that they are equivalent to HVLP spray guns in transfer efficiency.

The requirements for spray booth filters have been revised so that all spray booth exhaust filters must achieve 98 percent paint overspray filter efficiency (also referred to as ''arrestance''), and details have been added on the method that must be used to measure that efficiency. The final rule also clarifies that compliance with the filter efficiency standard can be demonstrated through data provided by the filter manufacturer.

The booth requirements have been revised to allow for openings in side walls and roofs for part conveyors. They have also been revised to allow for booths that are operated at up to 0.05 inches water gauge positive pressure, if they have sealed doors and other openings and use a pressure balancing system.

The rule language related to spray gun washing has been revised to clarify that atomized spraying of gun cleaning solvent is prohibited, and allowable means of washing spray guns include hand cleaning disassembled spray guns, manually flushing solvent through the gun (without atomizing it) and capturing the spent solvent, and using an enclosed gun washer, but an enclosed gun washer is not required.

E. Notifications, Recordkeeping, and Reporting

The notification and reporting requirements of the rule have been simplified and reduced. All sources will still need to submit an initial notification, but in that initial notification, sources will be asked to state whether they are already in compliance with the requirements of the rule or whether they plan to be in compliance by the compliance date. For new sources, the initial notification will also serve as the notification of compliance status since they would otherwise be due by the same date. If existing sources are already in compliance by the time they submit the initial notification and certify that they are in compliance in their initial notification, they do not need to submit a separate notification of compliance status. The need for regular annual compliance reports has also been removed. Sources will need to submit an annual compliance report only if there is a change in any of the information contained in the initial notification, the notification of compliance status (if one was needed), or in a previous annual compliance report (if one was needed).

The rule has been revised to remove the requirement for paint stripping sources to submit MeCl minimization plans to permitting authorities. Facilities will be required to submit either an initial notification or a notification of compliance status that says they have prepared and implemented the plan. Instead of submitting the plan, sources are only required to keep the plan on site. The facility has to review and update their plan annually and keep records of the review and changes made on site rather than submitting an annual compliance report to EPA or a State permitting authority.

For paint stripping, motor vehicle and mobile equipment surface coating operations, and miscellaneous surface coating operations, the rule has been revised so that these sources will only have to keep the records needed to demonstrate compliance instead of submitting annual compliance reports.

V. Summary of Comments and Responses

A. Applicability

Comment: Several commenters argued that the miscellaneous surface coating rule should apply only to surface coating facilities that emit the target HAP, and that target HAP should be defined as the HAP for which the miscellaneous surface coating source category was listed. These are specifically compounds of Cr, Pb, Mn, Ni, and Cd.

Response: The EPA agrees with the commenters and recognizes that many miscellaneous surface coating operations exist that do not spray apply coatings containing the target HAP. Therefore, the applicability sections have been revised so that the final rule will apply to only miscellaneous surface coating sources that spray apply coatings containing the target HAP. If your miscellaneous surface coating operations do not spray apply any coatings containing the target HAP, then you are not subject to this rule and do not need to comply with the requirements for operator training, spray guns, or spray booths. This change in the language of the applicability provision accurately reflects the sources for which the miscellaneous surface coating source category was listed, because sources that do not spray apply coatings containing the target HAP will have no target HAP emissions and were therefore not part of the inventory on which the source category listing was based. It will also create an incentive for all miscellaneous surface coating sources to review the coatings they are spray applying and find substitutes for those that contain the target HAP or to switch to non-spray methods to apply those coatings. Although some contract coaters and ''job shops'' may use a large number of different coatings, most miscellaneous surface coating operations use only a small number of coatings and the composition data for these can be reviewed to identify whether these coatings contain the target HAP.

However, based on the overwhelming support of the commenters for the applicability criteria and scope of the motor vehicle and mobile equipment source category, we are not narrowing the applicability to only the target HAP for the motor vehicle and mobile equipment source category. The EPA's understanding, based on site visits and communications with the industry, is that these requirements are consistent with current good environmental and worker protection practices. (See other comment responses for additional clarifications on applicability that exclude coating of personal property and vehicles, facility maintenance coating, etc.) The final rule applies to all motor vehicle and mobile equipment surface coating operations. However, if you are the owner or operator of a motor vehicle or mobile equipment surface coating operation, you may petition the Administrator for an exemption from this subpart if you can demonstrate, to the satisfaction of the Administrator, that you spray apply no coatings that contain the target HAP. Petitions must include a description of the coatings that you spray apply and your certification that you do not spray apply any coatings containing the target HAP. If circumstances change such that you intend to spray apply coatings containing the target HAP, you must submit the initial notification required by 63.11175 and comply with the requirements of this subpart.

Comment: One commenter suggested that the rule should be revised to add the NNSA to the list of installations to which this subpart does not apply. The commenter noted that EPA is planning that surface coating and paint stripping at NNSA installations would be addressed by the military surface coating NESHAP that is under development.

Response: The EPA agrees and has added NNSA installations to the list of installations to which this subpart does not apply. These installations will be addressed by the military surface coating NESHAP that is under development.

Comment: Several comments noted that the applicability of the proposed rule, as written, could be interpreted to apply to all paint stripping and surface coating operations, and included no exemptions for automobile hobbyists or homeowners stripping and painting their own property or vehicles. Nearly all commenters felt that paint stripping and surface coating by hobbyists and homeowners should be exempt from the rule. Several commenters suggested that EPA establish a de minimis usage threshold, based on either major source surface coating rules or state volatile organic compounds (VOC) rules, to exclude noncommercial paint stripping or surface coating operations. The commenters noted that hobbyist and homeowner activities are difficult to locate because they are located in residential areas and are intermittent. However, one commenter suggested that the rule should have no exemptions and any individual painting vehicles should be subject to the proposed equipment and training requirements.

Response: EPA re-examined the scope of the source categories that we listed based on the 1990 national emissions inventory. The analyses that were the basis for the source category listing for paint stripping, miscellaneous surface coating, and motor vehicle and mobile equipment surface coating focused on commercial operations, along with some government and institutional operations, such as municipal garages that service fleet vehicles. Homeowners

and hobbyists were not part of these analyses and were not intended to be part of the listed source categories.

Therefore, the final rule has been revised to clarify that it does not cover paint stripping and surface coating performed by individuals on their personal vehicles, possessions, or property, either as a hobby or for maintenance. This subpart also does not apply when these operations are performed by individuals for others without compensation, which is akin to the hobbyist and homeowner activities not considered in the baseline inventory that formed the basis for the listing of the source categories at issue here.

However, for motor vehicle and mobile equipment surface coating operations, an individual surface coating more than two vehicles per year will be covered by the rule. This limit on the number of vehicles coated per year was included so that commercial automobile surface coating shops could not avoid compliance by claiming to be a hobby shop. The limit was based on information collected from automobile hobbyists during the rule development. The hobbyists that provided information to the EPA suggested that a legitimate hobbyist would complete no more than two automobile restorations or customizations per year.

The EPA is not including a volumetric coating usage threshold in the final rule for either motor vehicle and mobile equipment surface coating operations, or for miscellaneous surface coating operations, as suggested by some commenters, because the threshold is not supported by the baseline inventory on which we based our listing decision. CAA section 112(c)(3) requires that EPA list sufficient categories and subcategories to ensure that area sources representing 90 percent of the emissions of the 30 listed urban HAP are subject to regulation. The CAA contains no exemption from the statutory requirement to regulate sources accounting for 90 percent of the emissions of an urban HAP. The inventory does not indicate that in listing the categories at issue here EPA included only those sources that use coatings above a certain threshold amount. Moreover, the commenter's reliance on the use of thresholds in certain major source HAP rules and State VOC rules is misplaced. EPA listed the area source categories at issue in this rule because the categories accounted for a certain percentage of the emissions necessary to meet the 90 percent requirement for the target urban HAP; therefore, regulation of the categories as listed is necessary for EPA to attain the 90 percent reduction of those HAP and comply with the requirements of section 112(c)(3) and 112(k). The rules on which the commenters rely were not issued under these provisions.

Comment: Three commenters suggested EPA exempt from the proposed rule operations that use less than 150 gallons per year of paint stripper that contains MeCl. A commenter justified the exemption as allowing minor paint stripping operations to continue, and let the regulating authorities focus on the more significant operations and facilities.

Response: EPA is required by the CAA to regulate emissions from area sources, which are, by definition, small sources. Based on baseline emission estimates updated with additional information provided by commenters, we estimate that 150 gallons of MeCl equates to approximately one ton of MeCl emissions per year from each of these small sources. This represents around five percent of the total area source MeCl emissions considered in the original section 112(k) inventory. While we appreciate the opinions of the commenters to focus on the more significant emitters, we cannot justify ignoring this level of MeCl emissions.

We have minimized the requirements and burden on these low level users by not requiring them to develop MeCl minimization plans. We do not feel that asking them to consider alternatives to using MeCl-based strippers is overly burdensome. The reporting requirements for these low level users are also minimal. They must submit an initial notification letter and keep MeCl-based stripper purchase or use records, which we believe would be maintained for tax purposes already. We do not believe that receiving one letter per facility would be overly burdensome for permitting agencies. In conclusion, we feel that our approach has adequately balanced the requirements of the CAA without unduly burdening small businesses in this source category or permitting agencies.

Comment: One commenter noted that while basing the threshold level that triggers development of a written MeCl minimization plan on the total quantity of stripper used may simplify compliance, it does not consider the MeCl content of the stripper formulation, and thus may create a disincentive for facilities to explore formulations with lower MeCl content. They stated that, although the MeCl-based products commonly used in paint stripping operations contain 75 to 90 percent MeCl, products containing 40 to 50 percent of the solvent are also available. However, they pointed out that facilities may need to use more stripper to compensate for the lower MeCl content, resulting in the need for higher volumes. The commenter indicated that they did not believe that specifying a use threshold based on the MeCl content was appropriate. They indicated that a higher gallon-per-year limit would allow many paint stripping firms to explore the applicability of lower MeCl-content formulations to their operations. The commenter stated that discussions with member companies that formulate MeCl-based strippers for commercial operations indicated that a threshold of 500 to 600 gallons also would better distinguish between operations that perform paint stripping as a regular part of their business and those that conduct stripping on an as-needed (incidental) basis.

Another commenter said that to be cost effective, shops buy MeCl based strippers in 55 gallon drums, which makes the 150 gallon per year minimum unrealistic. They suggested that a 220 gallon per year threshold would be a more realistic number and would reflect a factor of cost-effective bulk purchases.

Response: As discussed in the proposal preamble (72 FR 52966), a subcategory of paint strippers was created to distinguish those sources that were assumed to have alternative on site paint stripping technologies available. The threshold level to define this subcategory was proposed as a volume of MeCl-based stripper used (150 gallons per year). Given the large number of small businesses that will be impacted by this rule, we thought that this volume-based threshold would lessen the burden when compared with a threshold based on the mass of MeCl in the stripper.

However, we do recognize the relevant points made by the commenter. If owners and operators performing paint stripping cannot find non-MeCl alternatives, we certainly want to encourage them to consider strippers with lower MeCl contents. We understand that basing this threshold on volume may provide a disincentive to the use of these low-MeCl content strippers.

Like the commenter, we do not believe that specifying a use threshold based on the MeCl content is appropriate. However, we believe that simply raising the volume-based threshold would remove all incentive to use lower MeCl content strippers, rather than encourage their usage. Increasing the volume-based threshold from the proposed 150 gallons per year to the suggested 500 to 600 gallons per year would increase the emissions of

facilities required to develop a written MeCl minimization plan three or four-fold, assuming that they utilize a stripper with the same MeCl content. Further, sources using these levels of MeCl strippers could emit as much as three to four tons of MeCl if using high-MeCl content strippers. We do not believe it is unreasonable to require sources with the potential to emit MeCl at these levels to develop a formal plan for reducing these emissions and evaluating the feasibility of alternative paint stripping technology.

We considered including both a volume-based and mass-based threshold in the final rule. However, the complexity of such provisions defeated the purpose of using a simple volume-based threshold in the first place. Therefore, in the final rule, the threshold that defines the subcategory of paint strippers that is required to develop a written MeCl minimization plan is on a mass basis. Specifically, the final rule requires paint strippers that use more than one ton per year of MeCl in paint strippers to develop a written MeCl minimization plant to implement the management practices in the rule.

As noted in the proposal preamble, a major criterion in the selection of the proposed 150 gallons per year threshold was our model plant impacts analysis. The 150 gallons per year level was selected for the model plant representing stripping operations that use between 100 and 250 gallons of MeCl paint strippers. Facilities represented by this model plant would be using around one ton of MeCl per year for their paint stripping operations, depending on the density of the stripper and the percent of MeCl in the stripper (assuming the higher range of MeCl contents confirmed by the commenter). Therefore, as described elsewhere in the record for this rulemaking, any level selected within this range would still be consistent with our proposed threshold.

In addition to being consistent with our proposed intention, the one ton MeCl per year threshold is also relatively compatible with the requested volume-based levels requested by the commenter, assuming that lower-content MeCl strippers are used. For example, between 450 and 500 gallons of paint stripper containing 40 percent MeCl could be used and still remain below the one ton per year MeCl threshold.

Finally, while we appreciate the practicality of a threshold based on the purchase of 55-gallon drums, as discussed above, we have concluded that any volume-based threshold is not ideal. If owners and operators of paint stripping operators wish to remain below the threshold and avoid the requirement to develop a written MeCl minimization plan, we would suggest that they calculate the number of 55-gallon drums of stripper that they can utilize and still remain below the one ton level and plan accordingly.

Comment: Two commenters felt the number of affected paint stripping sources used to assess impacts in the proposed rule was too low. A commenter extrapolated information from California, Canada, and other sources to develop an estimate of sources affected by the proposed rule and commented that EPA's estimate of 3,000 sources was an underestimate. Using two methods to extrapolate from estimates of furniture stripping operations using MeCl-based strippers in California, one based on population and the other based on business statistics, they estimated that nationally, approximately 4,000 sources were involved in furniture stripping with MeCl-based strippers. Factoring in autobody shops use of MeCl-based strippers, the number of facilities affected is two to three times EPA's estimate of 3,000 firms. Additionally, a significantly larger number of firms would exceed the proposed 150 gallon threshold. As a result, the total cost of EPA's proposal would be significantly higher than estimated.

Response: Developing an estimate of the number of affected sources was a difficult portion of the analyses conducted, to arrive at the proposed rule and to estimate its impacts. Unlike source categories with large facilities, emission inventories were not as useful in arriving at an estimate of facility numbers. Further, this source category does not have an industrial trade organization to turn to for further information about the source category.

We appreciate the additional information on number of affected facilities provided by the commenters and considered the impacts of revising the population in the final rule. However, since little documentation was provided in support of the population estimate we have decided not to revise the estimate of sources. Finally, a change in the population totals affects the impacts proportionally and since we received no adverse comments on the assumptions and basis for our proposed impacts, which indicated a cost savings, we have decided not to revise the impacts and just rely on those at proposal as a worst-case analysis.

Comment: Several commenters asked for clarification on whether the rule applies to mobile automobile refinishers that perform spot repairs and other refinishing, such as fender and bumper repairs, at the customer's location, rather than in a conventional collision repair shop. Several other commenters also asked for clarification on whether motor vehicle refinishing coating operations (primarily refinishing of car bumpers and fenders) using ''miniature'' spray guns would be subject to the same standards as other motor vehicle refinishing operations. The commenters felt that surface coating with these miniature spray guns should be subject to the proposed standards, but felt that the final rule should clarify this applicability relative to operations done with air brushes. One commenter asked the EPA to increase the size of the spray cup allowed on air brushes that would be exempt from the standards.

Response: The proposed and final rule is intended to cover mobile motor vehicle refinishing operations that bring the coating equipment and supplies to the repaired vehicle, as well as those in which the vehicle is brought to a conventional collision repair shop. In the final rule, these mobile refinishers are subject to the rule requirements for training, spray equipment, and the use of a spray booth or other ventilated and filtered enclosure if they spray apply coatings from a spray gun with a cup size greater than 3.0 fluid ounces (89 cc). If they use a cup size equal to or smaller than 3.0 fluid ounces, they do not need to comply with the requirements for training, spray guns, and ventilated and filtered enclosures.

The proposed rule would not have applied to spray-applied coatings using an airbrush or spray gun with a cup size of 1.0 fluid ounce (30 cc) or less, and this was intended, in part, to address mobile repair and refinishing operations that performed repairs of small stone chips and scratches, and graphic artists and others using these small spray guns to paint motor vehicles, signs, or other items that are potentially subject to the rule. These touch up and repair operations, and graphic arts painting on vehicles, were not part of the original inventory that focused on collision repair shops and other types of motor vehicle and mobile equipment surface coating, so the source category does not include surface coating with small airbrushes, and such operations are not subject to this rule.

However, during the development of this rule, the EPA learned that more motor vehicle and mobile equipment surface coating that was formerly done by collision repair shops (and as such, was reflected in the source category listing) is now being done by mobile operators. Since this practice is becoming more common, the EPA has

decided that this source of emissions should be regulated on the same basis as motor vehicle and mobile equipment surface coating that takes place at a fixed location. Even so, the EPA felt it was not necessary to regulate in this rule small touch up and spot repair operations done with an airbrush, because these operations were not reflected in the original inventory and source category listing.

Since the EPA could identify no single characteristic or group of characteristics to clearly differentiate a larger spray gun from an ''air brush'' we have decided to define applicability based on the cup size of the spray equipment. In the final rule, all motor vehicle and mobile equipment spray coating operations and miscellaneous surface coating operations with a cup size greater than 3.0 ounces (89 cc) would be subject to the applicable standards for painter training and equipment. Surface coating operations with a smaller cup size would not be subject to the standards for spray-applied surface coating operations since these are typically just touch up and repair surface coating.

This size (3.0 ounces or 89 cc) was selected based on a review of vendor literature for miniature spray guns and air brushes, and discussions with collision repair shop owners that commented on the proposed rule. This cup size is less than the minimum practical amount of coating that could be used to refinish a bumper or fender. Therefore, it helps distinguish those sources that are doing small scratch and spot repairs from those that are doing work that is more typically done at a collision repair shop.

Comment: Many commenters stated that the proposed requirements for miscellaneous surface coating operations, as written, could be interpreted to potentially apply to all surface coating operations beyond those associated with the manufacture of plastic and metal parts and products. Examples cited by the commenters included the spray application of adhesives that do not include any of the target HAP, the spray application of coatings in the manufacture of leather shoes, and the spray application of coatings in the restoration of wood furniture.

Several commenters also asked that the rule should specifically exclude surface coating operations that do not involve the use of spray-applied liquid coatings, since these operations have little potential for the target HAP emissions.

Other commenters noted that the proposed rule could also be interpreted to apply to the surface coating of buildings and other stationary structures, such as bridges, water towers, and stationary equipment at manufacturing and processing facilities. The commenters recommended that the rule include an exemption for facility maintenance surface coating, and for research and development activities, as is found in the major source surface coating rules. Other commenters added that quality control activities should also be exempt since these are often of the same scale as research and development activities and are conducted at coating manufacturing facilities that do not produce surface coated parts for sale.

Some commenters noted that it may be impractical to perform surface coating of large pieces of mobile equipment, such as some types of mining and farm equipment, in a spray booth or similar enclosure. The commenters suggested an exemption for these types of equipment that are generally coated in the field since it is not practical to move them to a dedicated facility for surface coating.

Response: The EPA agrees with the commenters that the rule was intended to only apply to surface coating on plastic and metal substrates and language has been added to clarify that the standards do not apply to other substrates, such as wood, leather, fabric, rubber, masonry, ceramics, concrete, or stone. Spray coating of these other substrates was not considered in the inventory on which the surface coating source category listing was based.

The rule has also been revised to specifically exclude surface coating that meets the definitions of ''facility maintenance'', ''research and laboratory activities'', and ''quality control activities'' in § 63.11180. Paint stripping and surface coating associated with these research and laboratory activities and quality control activities will not be subject to the standards as long as the items that are the subject of the surface coating or paint stripping are not products for commerce or for a function outside the facility, and do not leave the facility. For example, surface coating of test coupons in the manufacture of a coating to verify the final color of the coating is a quality control activity that is exempt from the rule because the test coupons are not products for commerce and are not intended to leave the facility. However, surface coating that is done to correct a defect or repair damage on a product that was detected as part of a final quality control check before the product leaves the factory is potentially subject to the rule.

''Facility maintenance'' is defined to include architectural surface coating activities on stationary structures and process equipment. It is also defined to include the surface coating of mobile equipment in the field, such as farming or mining equipment, or mobile equipment coated at a site where it is used, such as a fork truck coated at a manufacturing facility. The surface coating of stationary structures in the field was not intended to be part of the miscellaneous surface coating source category and was not included in EPA's analysis in the development of the proposed rule. Similarly, the surface coating of process equipment including, for example, farming and mining equipment that is coated in the field, was also not intended to be part of the source category and was not included in EPA's analyses.

The definition of facility maintenance specifically excludes surface coating of motor vehicles, mobile equipment, or other items that routinely leave and return to the facility, such as delivery trucks, rental equipment, or containers used to transport or deliver products to customers. The paint stripping and surface coating of these latter items that routinely leave and return to the facility are subject to the standards for surface coating operations. Facility maintenance is limited to the paint stripping and surface coating of the infrastructure or process equipment of the facility. Items that routinely leave and return to a facility are not considered part of the facility's infrastructure or process equipment.

The final rule includes definitions of ''coating'' and ''spray-applied coating operations'' that include lists of materials and activities that are not subject to the final standards for either motor vehicle and mobile equipment surface coating, or for miscellaneous surface coating operations.

The definition of ''coating'' excludes the following materials because they either do not contain the target HAP, they are not spray-applied,or, if they are spray-applied, they are applied in larger particles that settle near the source and are not emitted and are not sources of the target HAP for which the surface coating categories were listed:

- Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances.
- Paper film or plastic film that may be pre-coated with an adhesive by the film manufacturer.
- Adhesives, sealants, maskants, or caulking materials.

• Temporary protective coatings, lubricants, or surface preparation materials.

The definition of ''coating'' also excludes in-mold coatings, typically gel coatings, that are spray-applied in the manufacture of reinforced plastic composite parts. Gel coats are part of the fabrication process for reinforced plastic composites, and were considered in separate processes when the EPA developed the inventory which served as the basis for the source category listing.

The definition of ''spray-applied coating operations'' excludes several operations that were not considered part of the inventory that was the basis for the source category listing. These excluded operations are not subject to the rule. As described earlier in this section, coatings applied from a spray gun or air brush with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cc) are not included because they are primarily used for touch up and repair operations.

Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, for example, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, and marking pens are not included because they do not atomize coating, so they are not sources of the target HAP emissions from the spray application of coating.

The definition of spray-applied surface coating operation does not include thermal spray operations (also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names). In these operations, solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact. These are inorganic coatings (conductive metals) that were not considered part of the source category. In addition, although they are metals (usually zinc or aluminum), they do not contain the target HAP of concern for which the miscellaneous surface coating category was listed. In addition, the metal particles created are larger than those created in spraying liquid organic coatings and are less likely to be emitted.

Comment: One commenter asked that the applicability be revised to specifically exclude surface coating operations on space vehicles so as to parallel the applicability of subpart GG, the major source NESHAP for Aerospace Manufacturing and Rework Facilities.

Response: The EPA agrees with the commenter and has revised § 63.11170 to specifically exclude surface coating on space vehicles from the standards for miscellaneous surface coating in the final rule. However, paint stripping operations on space vehicles using MeCl would still be subject to the standards in the final rule. Paint stripping on space vehicles is regulated at major sources by subpart GG.

B. Compliance Date

Comment: Several State agency commenters requested existing sources be given three years to comply rather than two years. They contend that more time is needed for State and local agencies to identify all subject sources and perform the needed outreach activities, and for the sources to have time to get all of their painters trained and to purchase and install any needed equipment. Sources may be difficult to identify and unfamiliarity with the rules is likely to be widespread because the sources are small businesses, with frequent employee turnover and changes in ownership. Commenters added that most other air toxics regulations allow existing sources three years to comply and this rule should be consistent to allow time for outreach.

Response: EPA has revised the proposed rule to allow existing sources three years to comply. EPA agrees that the State agencies and other commenters have provided sufficient justification that three years is needed. There is a lack of readily available information to identify all of the area sources that are subject to the rule. Many of the area sources covered by the rule are small and have not previously been subject to air pollution control rules. Therefore, implementing agencies will need time to widely publicize these rules, develop outreach materials, and perform outreach though a variety of channels in order to inform sources that they are subject to the rule. In addition, many small sources are likely to require assistance in determining applicability, identifying the necessary steps to achieve compliance including, but not limited to locating and registering for painter training. Section 112 of the CAA allows up to three years for existing sources to comply, and given the characteristics of the source category, three years is a reasonable compliance time for this rule.

C. Requirements for Paint Stripping Operations

Comment: Two commenters provided positive feedback on the proposal of Generally Available Management Practices as GACT, agreeing that development of a MeCl minimization plan is a good idea. They added that the plan would make sources more aware of the impacts of certain practices and require them to develop alternate ways to perform paint stripping operations without the use of MeCl. Another supported the EPA's focus on management practices to reduce emissions of MeCl from paint stripping operations rather than on what they termed inappropriate technology requirements or alternative stripping techniques.

Response: Like the commenters, we believed that it was most appropriate to place the decisions on the feasibility of alternatives to MeCl strippers at the feet of those who know their business best. Therefore, the final rule retains the proposed requirements that owners and operators institute management practices to reduce MeCl emissions from paint stripping.

Comment: There were several comments received that discussed the need for MeCl for stripping and expressed doubt at the plausibility of alternative technologies. A commenter remarked that in many cases, products containing MeCl are the only effective means of removing certain finishes, such as polyurethanes and most paints, for commercial operations. Another stated that, in their department's experience, most chemical paint stripping operations were dedicated to stripping paint from wooden furniture. They noted that the proposed management practice of recoating without stripping or substituting alternative stripping technologies was not a possibility for painted wood. Owners of a small business dedicated to restoring furniture, commented that for furniture restoration shops to reduce their MeCl use, there would have to be better alternative chemical strippers available. MeCl strippers are not flammable, but the current alternative chemical strippers are highly flammable and explosive. In addition, the current alternative chemical strippers cost two to three times those containing MeCl, and take two to five hours to work versus 15 to 20 minutes for those containing MeCl. Another commenter supported the EPA's proposal to allow the facility to determine whether a MeCl-based product was appropriate for the particular paint stripping task. They provided a comment that quotes from the preamble to the proposed rule that the evaluation criteria in the management plan would involve ''only using MeCl-containing paint stripper when an alternative on site stripper

method or material is incapable of accomplishing the work as determined by the operator.''

Response: The rule does not limit or ban the use of MeCl-based paint strippers. The rule also does not say when a facility can use or cannot use MeCl-based paint strippers. Instead, the rule encourages operations to think of ideas specific to their operation where alternative stripping technologies can be employed. The facility has the obligation to determine whether and when it can most effectively substitute alternative technologies for MeCl-containing stripper. In some cases a facility may find that MeCl strippers may currently be the only feasible choice; however, in other cases these strippers may currently be used as a matter of routine and suitable alternatives can be used instead.

The basis of the rule is to consider, and when possible, to use alternative stripping techniques. There are situations where alternative stripping methods can be employed successfully. Examples of alternative techniques for wood include sanding off the top layers of paint and using a smaller amount of MeCl-containing stripper to remove the remaining paint. Another would be to sand the flat surfaces and use the MeCl-containing stripper to remove the paint from only certain areas such as carvings or joinings.

D. Authority To Regulate Miscellaneous Surface Coating Operations

Comment: A commenter argued that plastic parts and product surface coating should not be listed as an area source of the specific heavy metals in urban areas. The commenter stated that the major source rule for plastic parts surface coating (40 CFR Part 63 subpart PPPP) did not regulate heavy metal emissions and did not require the use of spray booths. The commenter also stated that heavy metals were not mentioned in the proposed or final major source rule. The commenter also contended that the listing of plastic parts and products was not consistent with EPA's stated policy for listing sources of HAP (64 FR 38720, July 19, 1999) and heavy metal HAP (64 FR 38722). The commenter further stated that the analysis in the preamble to the proposed area source rule indicates that plastic part surface coating sources account for only about 700 pounds a year, or between 0.15 percent and 0.33 percent of total area source heavy metal emissions. The commenter requested EPA to change the listing decision and remove plastic parts coating operations from the rule.

Response: The listing and regulation of plastic parts and products (surface coating) for the targeted metal HAP is consistent with CAA requirements. Sections 112(c) and 112(k) of the CAA instruct EPA to identify and list area source categories accounting for at least 90 percent of the emissions of the 30 listed HAP (referred to as ''urban HAP'') (64 FR 38706, July 19, 1999). One of the listed area source categories is plastic parts and products (surface coatings). The commenter provides no information indicating that this listing was inappropriate.

In the 1999 final urban air toxics strategy notice, we listed 16 area source categories including paint stripping. Each of these categories accounted for at least 15 percent of at least one of the 30 urban HAP. See 64 FR at 38720. But, as indicated in that notice, the initial list of area source categories did not account for 90 percent of several of the HAP, including six metal HAP (64 FR 38722, July 19, 1999). That notice announced EPA's intent to study additional area source categories and complete the list of area source categories by 2003.

In June 2002, we listed several additional area source categories including autobody refinishing (67 FR 43122, June 26, 2002). That listing, however, still did not meet the requirement to list area sources representing 90 percent of the area source emissions of each of the 30 HAP. In the urban air toxics strategy, EPA indicated we would be adding additional area source categories as necessary to meet the 90 percent requirement.

Consequently, in November 2002, we listed 23 additional area source categories including plastic parts and products (surface coating) (67 FR 70428, November 22, 2002). Each of these listed categories contributes some percentage of emissions of one or more of the 30 urban HAP. The plastic parts and products (surface coating) area source category was listed for cadmium, chromium, lead compounds, manganese, and nickel compounds. In order to meet the 90 percent requirement for each of the 30 urban HAP, we had to list many categories that individually contributed only a small percent of the target HAP.

This history and the CAA requirements for area sources explain why the metal urban HAP are the target of the surface coating portion of this area source rule. We are required during rule development to regulate emissions of the target urban HAP from surface coating area sources. Under section 112(d) area source regulations may be based on GACT rather than MACT, which is required for major sources. In this rule we have established emissions standards that represent GACT for the source categories. The commenter has provided no information questioning the GACT determination in the proposed rule.

Comment: One commenter stated that the rule should not regulate surface coating on metal parts and products as part of the miscellaneous surface coating source category because it was not listed as an area source category. The commenter noted that the category included in the final notice for the list of source categories in November 2002[2] was ''plastic parts and products (surface coating).'' The commenter also noted that the description of this source category in supporting documents for that listing includes industrial classification codes only for plastic parts and products. However, the commenter notes that the standard industrial classification code for miscellaneous metal surface coating (SIC 3479) was included in the source category description for ''autobody refinishing paint shops.''

Response: The EPA's decision to list plastic parts and product (surface coating) as an area source category was based on analysis of emissions data from over 20 different SIC codes that represent manufacturers of parts and products that contain both metal and plastic substrates. These included, for example, architectural metal work; games, toys, and childrens' vehicles; motor homes; motor vehicle parts and accessories; motor cycles, bicycles, and parts; musical instruments; transportation equipment not elsewhere classified; and truck and bus bodies. These analyses were documented in ''1990 EMISSIONS INVENTORY OF FORTY POTENTIAL § 112(k) POLLUTANTS, SUPPORTING DATA FOR EPA'S § 112(k) REGULATORY STRATEGY, Final Report'' (May 21, 1999). A copy of the relevant portions of this document has been included in the docket for this final rulemaking.

Since the analysis of the inventory included a broad sampling of both metal and plastic surface coating that were identified as sources of the target HAP, the EPA is regulating both metal and plastic surface coating operations in the final rule. To more accurately reflect the scope of the regulated operation, we refer to them in the final rule as ''miscellaneous surface coating operations'' and describe them more completely in the applicability section of the final rule.

[2] 67 FR 70427 (November 22, 2002).

E. Basis of Surface Coating Standards

Comment: Some commenters believed that the requirements for spray booths and painter training, particularly applied to very small miscellaneous surface coating operations and those that apply coatings to large parts or subassemblies, are beyond GACT. Some commenters suggested that EPA should collect additional information on the types of spray equipment and practices being used, coatings being employed, and product rates at small sources. They claim that the requirements for spraying automotive coatings do not necessarily carry over well to the miscellaneous surface coating operations. Other commenters supported the proposed standards as GACT.

Response: The EPA disagrees that spray booths and painter training are beyond GACT for sources using coatings containing the target HAP. The analyses performed in support of the proposed rule demonstrate that painter training and filtered spray booths are both commonly employed by miscellaneous surface coating sources of all sizes.

However, the EPA has revised the proposed rule such that painter training and spray booths are only required for miscellaneous surface coating operations that spray apply coatings that contain the target HAP. Miscellaneous surface coating operations that do not use coatings that contain the target HAP will not be subject to these requirements. However, all motor vehicle and mobile equipment surface coating operations would still be subject to the requirements of the final rule.

F. Training Requirements

Comment: Several commenters felt that the training standards could be interpreted to apply to all painters, and those standards should only apply to spray coating operations. Painters in non-spray coating operations should not be required to complete training. Other commenters noted that training would not benefit the operators of automated or robotic surface coating operations, and these operations should be exempt from the training requirements.

Response: The rule has been clarified, as suggested by several commenters, to clearly apply only to painters that spray apply coatings using hand-held devices. Painters using brushes and rollers, and other non-spray application methods, are not subject to the training requirements. In addition, all automated and robotic surface coating operations are not required to meet these requirements since these operations are not considered part of the intended source category. Automated operations are typically performed in a booth, are part of a production line operation with similar, if not identical, parts, and often result in high transfer efficiency.

Comment: One commenter suggested that painting is an art form not possessed by everyone and a test and certification should not be used to dictate who works as a painter. Another painter asked whether the rule would include a grandfather clause that would exempt experienced painters based on their length of time in the business or years experience painting. One commenter suggested that retraining every five years is not needed because of the daily experience of painting.

Response: The EPA agrees that spray painting is a skill that is not easily mastered, and that shop owners will avoid hiring and keeping poorly performing spray painters. However, information collected by EPA in development of the proposed rule has shown that even experienced spray painters can improve their transfer efficiency and reduce emissions and paint consumption through appropriate training. Therefore, the final rule retains the training requirement for all spray painters at motor vehicle and mobile equipment surface coating operations, and for all spray painters that use coatings containing the target HAP at miscellaneous surface coating facilities.

The final rule will allow painters who have completed formal training in the past five years to use that training to demonstrate compliance. Refresher training is retained in the final rule since it is important to ensure that painter techniques do not revert back to those that were used before training, and also so painters can be brought up to date on current technologies.

Comment: One commenter suggested that the rule should allow 180 days after hiring for new painters to be trained, instead of 60 days, as well as for new painters at existing facilities.

Response: The EPA agrees and the rule has been revised to allow 180 days after hiring, or after completing a transfer within a facility to a painting job, for new painters to complete the prescribed training.

Comment: Several commenters were concerned about the availability of training and the suitability of training for the particular type of surface coating that they perform, or the type of workforce they have. Some commenters noted that their painters may not speak English, or be able to perform well in a typical classroom setting or in a testing environment. In these cases, a formal certification may be difficult for their painters to achieve. One commenter noted that inmates participating in prison industries could not be sent to outside training. Other commenters were concerned that training should not be limited to any one type of program or it could create a limited market of providers and costs may not be affordable for small shops. They suggested that the rule language should be more specific about the criteria that would indicate a training program meets the minimum requirements.

Response: The EPA agrees that training should not be limited to any one provider or a small number of providers, and should be available and affordable for all sizes and types of shops. The final rule includes additional detail on the training requirements so that alternative training programs can be developed that meet the minimum requirements and meet the particular needs of different types of shops. For example, the EPA recognizes that some larger employers may wish to develop in-house training programs that are focused on the materials, products, and procedures used at a particular facility.

The final rule does not specify that any one training provider or program must be used. The final rule allows flexibility for the best training environment and certification process that an owner or operator can identify for their particular work site that meets the requirements in the final rule. The training requirements have been revised to allow for in-house training programs and for successful completion of a training program to be certified by the owner of the facility.

Comment: Several commenters suggested that if the EPA is expecting industry to provide certification or training programs, the rule should make provisions for a certifying agency or program certification procedures. One commenter asked whether training programs would need to meet a set of standards, and whether a manufacturer, trade school, or consultant would be required to submit curriculum to EPA for prior approval. Another commenter recommended that training programs used to meet this regulation should be validated or certified by an independent clearinghouse. The commenter suggested that EPA should delegate this responsibility to a proven program that has a history of developing and providing paint technician training, since the EPA does not have the necessary painting experience to do this.

Response: The EPA does not believe that it is necessary to establish or designate a body to certify or approve training programs to comply with the requirements in the final rule. The final

rule includes sufficient detail on the training requirements so that training programs can be developed that meet the minimum requirements. The EPA feels that painters and the shops that employ them are the most appropriate judge of different training programs, due primarily to the economic benefit they can realize through good training. Since the shop owner or the painter will need to absorb the initial cost of training (even though it should represent a coating cost savings in the long run), it will be up to painters and shops to identify and evaluate training programs that best meet the requirements of the final rule and which seem to be the best investment of their time and resources. To the extent that additional guidance on the training requirements in the final rule is needed, the EPA will work with all affected parties to develop that guidance.

G. Spray Gun Requirements

Comment: Several commenters state that a number of spray coating applications cannot be accomplished using HVLP, electrostatic guns, or equivalent techniques. Two commenters stated that EPA determined during the development of the NESHAP for Aerospace Manufacturing and Rework Facilities (40 CFR 63, subpart GG) and other major NESHAP rules that high solids coatings cannot be applied using HVLP, or equivalent methods.

Response: The final rule includes the same exemptions from the HVLP requirements for aerospace manufacturing and rework facilities as subpart GG. The rule was revised to exempt any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns, and the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.). The technical basis for these allowances for aerospace surface coating operations was established in the development of subpart GG. Since there is no technical difference between these aerospace surface coating operations at area and major sources (aside from the relative size of these operations), the EPA is including the same allowance in the final rule as found in subpart GG.

Comment: Several commenters requested that airless and air-assisted airless spray guns should be considered equally efficient and equivalent to HVLP, and requested that EPA treat airless spray equivalent to HVLP for the purpose of this rule. One commenter stated that airless spray operations are very common for most miscellaneous parts surface coating operations and should be considered as a viable and authorized option.

Another commenter provided an example of a structural steel facility that uses a high viscosity, high solids coating as being an operation that could not employ HVLP spray guns. The commenter stated that such operations generally use airless spray guns to apply high-viscosity, high solids primers.

Another commenter stated that while HVLP spray guns and gravity fed supply lines are well suited for the automotive refinishing industry, pressure fed application equipment is best suited and typically used in other miscellaneous sectors. Other sectors use coatings that have characteristics much different from automotive coatings. Quite often, these coatings are higher in viscosity because of higher solids content, compared to automotive coatings.

Response: The final rule requires that miscellaneous surface coating operations are only required to employ HVLP, or equivalent, spray guns if they are spraying coatings that contain the target HAP. Motor vehicle and mobile equipment surface coating operations must use HVLP or equivalent spray guns for all surface coating. The rule was also revised to allow airless and air-assisted airless spray guns as alternatives to HVLP. Airless and air-assisted airless spray guns are used in some applications instead of HVLP spray guns because they are more suited to spraying higher solids coating, such as in the fabrication of large structural steel components, and in applying coatings to ships and other marine items. In these cases, HVLP spray guns are not feasible because of the viscosity of the coating, and airless and air assisted airless spray guns are the most efficient means to spray apply these coatings.

H. Spray Booths

Comment: Several commenters stated that requiring spray booths is not practical, realistic, or economically feasible for some facilities performing coating on work pieces that are too large to fit in a booth such as large structural metal work pieces, fixed equipment, structural steel, and large mobile equipment.

Several commenters also stated that requiring spray booths for these types of operations would make the rule more stringent than the MACT rules for the corresponding industries. One commenter provides an offshore drilling rig as an example of mobile equipment that is too large for a spray booth. Two commenters requested that the rule include an exemption for the surface coating of oversized parts.

Response: The proposed rule was revised so that it does not apply to miscellaneous surface coating operations that do not spray apply coatings that contain the target HAP. The proposed rule was also revised to clarify that it does not apply to facility maintenance of fixed equipment and architectural surface coating of stationary structures.

The final rule has not been revised to specifically exempt the surface coating of large objects from the spray booth requirement. However, the surface coating of large objects would not be subject to the requirements of the final rule if the coatings that are spray applied do not contain the target HAP, the surface coating operation of the object met the definition of facility maintenance, or the surface coating was done using non-spray application methods. The EPA believes that the surface coating situations described by the commenters involving large objects all fall into at least one of these categories. Therefore, they would not be subject to the requirement to use a spray booth and an exemption for large objects is not specifically required by the information provided by the commenters.

Comment: Three commenters expressed concern regarding the language requiring negative pressure paint booths. The reason for this concern is that for critical finishes, such as automotive surface coating, negative pressure may cause airborne dust and dirt to be drawn into the booth and mar the finish. As a result, downdraft paint booths used for automotive surface coating are usually ventilated at slight positive pressure so that contaminants are kept out of the booth, although door seals and filtration systems are still used to protect air quality. One commenter suggested that in applications that require a dust/dirt free finish, and where the spray booth is totally sealed and the booth control system utilizes an automatic pressure balance system, spray booths should be allowed to operate at up to, but not more than, 0.05 inches water gauge positive pressure.

Response: The final rule was revised to allow for downdraft spray booths that are balanced at slight positive air pressure and incorporates the recommended language. The EPA observed several spray booths of this configuration during site visits in the development of this rule and agrees that with appropriate door seals and filtration systems these booths are as

protective of the environment as booths operated at negative pressure.

Comment: Several commenters stated that the EPA has understated the impacts of the proposed requirement to use a spray booth for all spray finishing operations. The commenters noted that EPA did not assign any costs to the requirement to use a spray booth because the EPA had assumed that spray booths would already be required in order to comply with OSHA standards for spray finishing operations under 29 CFR 1910.94(c). The commenters argued that OSHA standards require a spray booth only if certain exposure conditions are met, and these exposure conditions can be avoided with, for example, the use of waterborne coatings or outdoor spraying operations. Other examples of spray coating operations that can be conducted outside of a filtered spray booth in compliance with OSHA include automotive undercoating, areas of low coating use with adequate ventilation, powder coating, waterborne products, and touch-up and repair coating.

Response: The EPA acknowledges that there are situations in which OSHA does not require surface coating to be performed in a filtered spray booth. That being noted, the rule was revised to clarify that the scope of the source category does not include miscellaneous surface coating operations if the coating being used does not contain the target HAP, facility maintenance surface coating and other architectural surface coating of stationary structures, powder coating and the spray application of coatings from a spray gun with a cup size equal to or less than 3.0 fluid ounces (89 cc). Given the clarified scope of the surface coating operations that are subject to the spray booth requirements in the final rule, the EPA believes that there is a substantial overlap between the operations that would be performed in a spray booth to comply with OSHA standards for spray finishing operations and those that would be required to do so by this rule. Therefore, the EPA does not believe that we have substantially underestimated the cost of the final rule.

Comment: Two commenters pointed out that EPA did not address enclosing automated or robotic spray systems in a spray booth. One commenter stated that the costs for doing so could be very high and requested that EPA exempt all fixed point automatic spray installations from this rule.

Another commenter stated that the proposed rule did not include language that addressed spray booth configurations with openings for conveyor lines that carry parts through a booth. The commenter suggested that the openings for conveyors would be equal to no more than the area of the open face of a three-sided spray booth.

Response: The rule was revised to clarify that automated or robotic spray operations were not considered within the scope of the source category, as the source categories for surface coating were intended to cover coating that is spray applied using hand-held devices.

The EPA acknowledges that miscellaneous surface coating operations may be spray applying coatings that contain the target HAP using conveyor line configurations, and the rule was revised to account for openings needed on side walls and roofs of spray booths to accommodate the conveyor lines.

Comment: One commenter noted that spot repairs on automobiles can be performed using commercially available portable extraction systems. One such system consists of a ring that is placed around the area to be repaired. The ring is hollow and is attached to a ventilation system so that air and overspray are drawn into the ring placed around the area being repaired. The commenter asked whether this would be an acceptable alternative to a spray booth for small spot repairs.

Response: The EPA reviewed the product information cited by the commenter and agrees that portable or mobile enclosures and extraction systems such as the one cited by the commenter are reasonable alternatives to a full size paint booth for small repairs. The paint booth requirements in the final rule have been revised to allow for the use of portable enclosures and extraction systems that can be used to enclose only the area being refinished in a spot repair. The enclosure would still need to be ventilated so that air is drawn into and paint overspray is captured by the enclosure, and it would also need to meet the same requirements for spray booth filters as full size spray booths.

I. Spray Booth Filters

Comment: Several commenters stated that requiring facilities to demonstrate compliance by testing for filter efficiency places an undue burden on any facility attempting to use a more efficient filter. Vendor guarantees or specifications should be sufficient for compliance.

Response: It was the intent of EPA that filter specifications or filter performance data provided by the filter manufacturer would suffice for the purpose of compliance in the proposed rule. The final rule clarifies that records of manufacturer specifications or vendor supplied or published data are sufficient for demonstrating compliance with the filter efficiency requirement. Operators are not expected to have to perform the test since it is usually done by the filter vendors.

Comment: One commenter stated that waterwash filters were not discussed in the proposed rule. The commenter requested that EPA assess the acceptability of water wash booths as a control technology for overspray.

Response: The final rule was revised to state that waterwash spray booths will be acceptable for the purposes of complying with the rule as long as they are used and maintained according to manufacturer specifications and consistent with good air pollution control practices. Although many waterwash spray booths have been replaced or retrofitted with dry filters, there are some applications where waterwash spray booths are still the most practical technology to control paint overspray. Since EPA believes that properly operated and maintained waterwash spray booths are nearly as efficient as required by this rule for dry filters and it would not be cost-effective to require retrofitting with dry filters, considering the potential limited increase in capture efficiency, the final rule provides for the use of waterwash spray booths, but requires that they be operated and maintained according to the manufacturer's specifications.

Comment: One commenter stated that the paint overspray filter criteria are inconsistent. The commenter requests that if 98 percent overspray filter efficiency is the criteria, then it should be required for all paint overspray filters. The commenter speculated that by stating in the regulation that any fiberglass or polyester filter is acceptable, the practice of using cheap, low efficiency furnace filters could grow. The commenter suggested that specifying a minimum filter efficiency of any medium would be more effective at reducing particulate emissions.

Response: The final rule was revised so all spray booth dry filters, regardless of media, are required to meet the 98 percent efficiency standard. The rule was also revised to clarify that records of manufacturer's specifications or filter performance data are sufficient for demonstrating compliance with this performance level.

J. Spray Gun Washers

Comment: One commenter stated that the need for enclosed spray gun washers may be over emphasized since the intent of the rule is to prohibit the atomization of solvent through the gun into the air. Although the proposed rule

indicates that spray equipment may be dismantled and cleaned in lieu of a gun washer system, this alternative seems overshadowed by the gun wash option and may be lost in the rule interpretation. Other commenters reported that some commercially available enclosed gun washers were less efficient and more difficult to use and maintain than simply disassembling a spray gun and cleaning it by hand in a container of solvent.

Two commenters stated that the rule should allow for equipment to be cleaned by spraying a non-HAP containing solvent through the applicator outside of an enclosed gun washer.

Response: The final rule was revised to clarify that if washing a gun, an affected facility is prohibited from spraying cleaning solvent through the gun in a way that creates an atomized mist that is not captured. The intent of this requirement is to prevent the emission of the target HAP that is in the paint residue that remains in the spray gun. The EPA agrees that an enclosed gun washer is not needed to meet this objective. To comply, you may, for example, clean a disassembled gun by hand in a bucket or vat, flush solvent through the gun without atomizing it and capturing the solvent in an enclosed container, or use an enclosed manual or automatic gun washer. The final rule does not require the use of an enclosed gun washer, but identifies an enclosed gun washer as one compliance option in addition to the other options suggested by the commenters.

K. Reporting, Recordkeeping, and Compliance

Comment: A commenter felt that it would be more suitable for sources to keep the MeCl minimization plan for paint stripping operations on site rather than submitting it to the State and EPA. They stated that States and EPA would not have the time or resources necessary to review the plans, and that they were unsure what kind of review/approval process should be used. Another commenter stated that since the proposed standard imposes management practices rather than emissions limits, it is not clear what aspect of their compliance activity sources would need to report. They suggest that beyond the initial report, the only reporting that should be necessary would be a change in status relative to the threshold level for developing a MeCl minimization plan.

Response: The development and implementation of the MeCl minimization plan is designed to reduce MeCl usage and emissions at the facility level. In the proposed rule, the requirement to submit the MeCl minimization plan was included to ensure that there would be oversight of facilities' plans. However, EPA understands the commenter's point that the value of submitting them to the State or EPA would likely not offset the burden of time and resources for submittal and review. As a result, the final rule was revised so that it does not require facilities to submit their plans to State or local agencies, or the EPA. The final rule requires them to keep their plans on site and to include a statement in their initial notification or notification of compliance that they have developed their plans and met the requirements associated with the MeCl minimization plan. The final rule also includes a requirement for facilities to review their plans annually and to make changes as appropriate based on their experiences in the previous year. Documentation of this review will also replace the proposed rule requirement to submit annual compliance reports to the permitting authority. While the final rule does not require submission of the MeCl minimization plan, facilities that are required to develop plans must still submit an initial notification and a notification of compliance, and meet annual MeCl minimization plan review, revision, and recordkeeping requirements.

Comment: One commenter indicated the annual reporting time and costs appeared to be underestimated unless simple materials are developed to help streamline the efforts of small businesses to complete this reporting. The commenter predicted that small businesses would spend closer to 15 hours or more to develop something on their own and to compile all the information alone would probably take six to eight hours. If a small business owner tries to minimize his or her time spent on the report, they would have to hire a consultant at $100 per hour or more. The consultant may take just six hours to complete the work, but that total cost would be $600 instead of $219, according to the commenter. Other commenters also indicated that the reporting burden had been underestimated.

Some commenters questioned whether EPA had considered the cost to EPA, State, and local implementing agencies to perform outreach and assist sources to comply, receive initial notifications, conduct field inspections, and process annual certifications.

Some commenters also said that initial notifications, compliance status notifications, and annual compliance reports would place an undue burden on facilities and State agencies. One commenter suggested allowing sources to maintain records of compliance on site and make them available upon request for local, State, or Federal inspection without submission of annual reports. Another suggested the following for autobody refinishing shops: Combine the initial notification with the notification of compliance status, eliminate the annual reports, keep file copies of training certifications for currently employed painters, eliminate some other records including records of deviations, and possibly the requirement to keep records for five years.

Response: The EPA has revised the rule to reduce the notification and reporting burden to sources and the burden to State and local agencies receiving the notifications and reports, while still retaining information needed to implement and enforce the rule. In particular, the final rule does not require facilities to submit annual compliance reports. Therefore, after the one-time initial notification and notification of compliance status (if needed), there will be no regular annual reporting burden to sources, and the implementing agencies will not need to review and track thousands of annual compliance reports. Sources will only need to submit a report if there is a change in the information contained in the initial notification, notification of compliance status, or a previous annual notification of changes report. This is a reasonable approach that reduces the burden on regulated sources, but provides EPA and delegated States with necessary compliance information. If there are no changes in a given year, the report would be identical to what was previously submitted, either in an earlier annual report, in the initial notification, or in the notification of compliance status. Therefore, EPA believes it is appropriate to require a report only if the relevant information has changed.

Sources will still be required to submit an initial notification that they are subject to the rule. The notification contains a very brief description of the operation that is subject to the rule; however, the type of information that should be included is minimal, clearly explained in the rule, and should be readily available to the owners and operators of motor vehicle and mobile equipment surface coating shops, or miscellaneous surface coating operations.

The initial notification is needed so that implementing agencies will have a list of sources that are subject to the rule and will know with which part of the

rules each source must comply (e.g., surface coating or paint stripping). This is necessary so that implementing agencies can target outreach, inspection, and enforcement efforts.

In addition, sources will continue to be required to keep the proposed records to demonstrate compliance. These records are limited to painter certification records, documentation of spray booth filter efficiencies (which are expected to be supplied by the manufacturer), documentation from spray gun manufacturers (only if the source is using a spray gun other than the types listed in the rule), records of usage of paint strippers containing MeCl, and records of deviations from the rule requirements. The content of the required records is clearly explained in the rule, and the records can be kept in whatever format is easiest for the shop (hard copies or electronic). These records are the minimum level of information needed for an inspector to determine if a source is complying with the rules.

The EPA has not reduced the amount of time that records must be retained. The records that must be retained are minimal and reducing the time they are kept from five years to two years would not affect the burden of storing these minimal records. In addition, the longer record period is the minimum needed to verify compliance with the training requirements since refresher training is needed every five years. The longer record period is also needed to ensure that paint stripping sources that have to complete a MeCl minimization plan are consistently reviewing and updating the plan on an annual basis.

L. Cost and Economic Impacts

Comment: Several commenters said that the number of area sources that perform miscellaneous surface coating is much larger than EPA estimated. These estimates were based on the number of miscellaneous surface coating sources known to regulatory agencies in different States. The commenters estimated that the total number of sources subject to the rule could be about 200,000 nationwide, and many of these could be small businesses. Another commenter believed that EPA has not met the criteria needed to certify that there will not be a ''significant impact on a substantial number of small entities'' (SISNOSE) as needed under the Regulatory Flexibility Act (RFA) and has underestimated the cost and economic impacts because the rule would require many sources to install spray booths and obtain operator training.

Response: The EPA agrees that the number of sources that could have been affected by the proposed rule, if interpreted to apply to all miscellaneous surface coating operations, was higher than estimated at proposal. However, the EPA has revised the final rule to clarify the intended sources to which it would apply, and to reduce the actual number of affected sources subject to the rule. Miscellaneous surface coating facilities that do not spray apply coatings that contain the target HAP will not be subject to the final rule.

The EPA believes that these changes in the final rule will more accurately reflect the number of sources that are potentially subject to the rule, and for which the proposed economic impacts were based, since only a fraction of miscellaneous surface coating sources use coatings that contain the target HAP. Based on the datasets available to EPA for the miscellaneous surface coating source category and additional information submitted by several commenters, EPA estimates that less than 10 percent of the total population of sources are spray applying coatings that contain the target HAP. In addition, many miscellaneous surface coating sources that are currently using coatings that contain the target HAP may be able to avoid being subject to the rule by either switching to coatings that do not contain the target HAP, or switching to non-spray application technology. Based on these changes, the EPA believes that the rule will not have an adverse impact on those facilities.

VI. Summary of Environmental, Energy, and Economic Impacts

The EPA estimates that about 39,000 establishments performing paint stripping, motor vehicle and mobile equipment, or miscellaneous surface coating operations would be subject to the final rule. We estimate that about 3,000 of these establishments are paint stripping facilities and 36,000 establishments are surface coating operations. The majority of these surface coating establishments (about 35,000) are involved in motor vehicle and mobile equipment refinishing, and employ about 263,000 people, of which about one-third are painters.

A. What are the air impacts?

Paint Stripping Operations

The baseline MeCl emissions from paint stripping operations are estimated to be 3,800 tpy. Around 500 tpy is estimated to be emitted from the approximately 2,000 facilities that annually use paint stripper containing one ton of MeCl or less. The remaining 3,300 tpy is estimated to be emitted by the approximately 1,000 paint strippers that annually use paint strippers containing more than one ton of MeCl and who would be required to develop a MeCl minimization plan.

Miscellaneous Coating Operations

The baseline emissions from the surface coating operations are estimated to be about 38,000 tpy of HAP, including 12.4 tpy of inorganic HAP (e.g. Pb and Cr-VI compounds). In addition to the HAP, baseline emissions of criteria pollutants are estimated to be 3,100 tpy of particulate matter (PM) from paint overspray and 120,400 tpy of volatile organic compounds (VOC) from coating and solvent evaporation.

Implementation of the final standards would achieve a reduction of 6,900 tpy of HAP from surface coating operations, including about 11.4 tpy of inorganic HAP. In addition to the HAP, we estimate PM reductions of about 2,900 tpy and VOC reductions of about 20,900 tpy. These reductions would occur as a result of reduced use of HAP-containing solvents and coatings, increased use of filtered spray booths to capture overspray, increased spray painter training, and use of HVLP or equivalent guns to improve transfer efficiency and to reduce coating overspray and paint consumption. Additional detail on these calculations are included in the public docket for this rulemaking.

B. What are the cost impacts?

Paint Stripping Operations

We estimate that the final standards for paint stripping operations will result in an initial cost of around $1,500,000 and a net savings in annual costs. This includes an estimated initial cost of $490,000 and annual costs of $80,000 for the nearly 2,000 paint strippers who annually use paint stripper containing one ton of MeCl or less. Initial costs for the approximately 1,000 paint strippers who annually use paint strippers containing more than one ton of MeCl, who would be required to develop MeCl minimization plans, are estimated to be just over $1 million. The annual costs for those plants are estimated to be a net savings of $910,000.

For the nearly 2,000 paint strippers who annually use paint strippers containing one ton of MeCl or less, switching to alternative non-MeCl paint stripping methods comprise most of the costs.

The costs for the approximately 1,000 paint strippers who are required to develop MeCl minimization plans are attributable to the development and implementation of the MeCl

minimization plan. Annual costs will include an estimated $400,000 for the development and implementation of the MeCl minimization plan and an estimated $450,000 associated with switching paint stripping technologies. Annual savings resulting from the implementation of the MeCl minimization plan include an estimated $420,000 from the elimination of unnecessary stripping operations and $1,320,000 in management practice savings from the reduced use of MeCl-containing strippers. Additional detail on these calculations are included in the public docket for this rulemaking.

Miscellaneous Coating Operations

We estimate that the final standards for surface coating operations will have no net annual cost to surface coating operations. The initial cost of complying with the final standards would be off-set and recovered over time by cost savings as a result of more efficient use of labor and materials by surface coating operations. The initial costs for surface coating operations are for purchasing improved spray booth filters, HVLP or equivalent spray guns, and painter training, if needed to comply with the final standards.

Spray finishing operations are already required by OSHA standards to perform spray painting in a spray booth or similar enclosure. However, the final standards specify that certain types of filters have to be used on the spray booth exhaust to minimize HAP emissions, and these filters are not addressed by OSHA standards. Some surface coating sources may need to replace their current filters for ones with higher paint overspray capture efficiency, but the higher efficiency filters are readily available and will not result in an additional cost.

The estimated cost for training is $1,000 per painter, which covers tuition cost and labor cost for 16 hours of training time. Based on the United States census data collected to estimate new sources for this source category the number of refinishing shops in the United States remain constant (i.e., for every new shop, a shop closes) and it is expected that this trend will continue in the future. This reflects on the number of new painters that would need training. We assumed that training certification would be valid for five years, so about one-fifth of painters (20 percent) would receive training every year. We estimate that about 18,000 painters would be trained per year at an annual cost of $18 million per year.

However, EPA believes that these training costs could be over-stated for at least two reasons. First, many facilities already send their painters to training sponsored by paint companies and trade organizations. Paint companies sponsor painter training so that the paint company can reduce warranty claims on their paint products. These training courses already cover much of the same material required by the final rule. Therefore, the rule would not impose new training costs on these facilities that already participate in training.

Second, the estimated training cost could be offset by reduced coating costs if the training results in reduced coating consumption. Data from the STAR® training programs indicate that painters who complete this training can decrease the amount of coating sprayed by about 20 percent per job. We estimate that if a typical facility reduced their coating consumption and costs by about four percent per year, the cost savings would equalize the increased cost of training after one year, and there would be no net cost in training. To recover the cost of training over five years, a typical facility would need to reduce their coating consumption by slightly less than one percent.

In summary, EPA estimates that the final requirements for surface coating operations would not result in any net increase in annual costs from the control requirements for surface coating operations. We estimated that the annual cost for recordkeeping and reporting for surface coating operations would be $7.8 million for about 36,000 surface coating operations, or an average of about $220 per facility. Cost estimates are based on the information available to the Administrator and presented in the economic analysis of this rule. Additional detail is included in the public docket for this rulemaking.

C. What are the economic impacts?

The economic impact analysis focuses on changes in market prices and output levels. A more detailed discussion of the economic impacts is presented in the economic impact analysis memorandum that is included in the docket.

Both the magnitude of control costs needed to comply with the rule and the distribution of these costs among affected facilities can have a role in determining how the market prices and quantities will change in response to the rule. In this case, we have so many facilities that model facilities must be used in the cost analysis. The cost analysis estimates that there will be no net increase in annual costs from the control requirements from the final regulation for surface coating operations. The record keeping and reporting costs are estimated to range from $76 to $95 per facility per year.

These costs are too small to have any significant market impact. Whether the costs are absorbed by the affected facilities or passed on to the purchaser in the form of higher prices, the impacts would be quite small.

The cost analysis estimates that there will be a net cost savings from the control requirements, recordkeeping, and reporting from the final regulation for paint stripping for all but the smallest model plant. The cost for the smallest model plant is estimated to be $11 a year.

Again, these costs are too small to have any significant market impact. Whether the costs are absorbed by the affected facilities or passed on to the purchaser in the form of higher prices, the impacts would be quite small.

While most of these facilities are small, the very small costs are not expected to be even a tenth of a percent of revenues. Thus a significant impact is not expected for a substantial number of small entities.

D. What are the non-air health, environmental, and energy impacts?

Paint Stripping Operations

We estimate that there will be a reduction in non-air health and environmental impacts resulting from the paint stripping area source NESHAP. Reduced usage of MeCl-containing chemical strippers will result in reduction in waste water generated from rinsing chemically stripped pieces. Additionally, reduced chemical stripping activity will result in a reduction in the generation of hazardous wastes composed of rags and other chemical stripper applicators and removal equipment.

EPA expects some increase in the need for energy resulting from switching away from MeCl-containing chemical strippers to other paint stripping methods. There would be a slight increase in energy usage associated with switching to other chemical strippers that do not contain MeCl because they often need to be heated above room temperature to be most effective. There is also some increase in energy usage associated with non-manual mechanical stripping and blasting with both dry and wet media.

The energy usage increase would be somewhat more for thermal decomposition or cryogenic paint stripping technologies. Thermal decomposition basically uses natural gas heated ovens to bake the paint off the substrate. Cryogenic paint stripping methods have increased electricity demands associated with the production

of liquid nitrogen or liquid carbon dioxide.

Surface Coating Operations

We estimated that about 5,000 surface coating operations, primarily motor vehicle refinishing operations, would need to install spray booths to comply with the final standards. Spray booths would need electricity to run fans and natural gas to heat make-up air to maintain facility temperatures in colder weather. We estimate that this would lead to an increased electricity consumption of 9.8 million kilowatt hours per year and increased natural gas consumption of 724 million cubic feet per year. However, spray booths are already required for spray finishing operations to comply with OSHA standards, so these impacts would not be assigned to these final standards.

Facilities that install spray booths would also need to dispose of used spray booth filters. These are often placed in a sealed drum to prevent spontaneous combustion and disposed of as hazardous waste. We estimate that 5,000 new spray booths could generate used filters equal to about 8,000 drums per year.

We expect no increase in generation of wastewater or other water quality impacts. None of the control measures considered for this rule generates a wastewater stream.

The installation of spray booths and increased worker training in the proper use and handling of coating materials should reduce worker exposure to harmful chemicals in the workplace. This should have a positive benefit on worker health, but this benefit cannot be quantified in the scope of this rulemaking.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The standards would require sources to submit an initial notification that they are subject to the standards, submit a notification of whether or not the source is in compliance (the notification of compliance status) and keep records needed to demonstrate compliance. These requirements would be the minimum needed to ensure that sources were complying with the requirements of the rule.

EPA estimates that about 40,000 existing area sources would be subject to the standards. EPA also estimates that about 1,600 new facilities would open per year in the three years following promulgation of the standards, but that the total number of facilities would remain constant as new facilities replace facilities that have closed.

New and existing sources would have no capital costs associated with the information collection requirements in the standards.

The estimated recordkeeping and reporting burden in the third year after the effective date of the promulgated rule is estimated to be 62,877 labor hours at a cost of $2.2 million. This estimate includes, depending on the type of source, the cost of keeping records of paint stripping solvent consumption, painter training, spray booth filter efficiency, and spray gun transfer efficiency. The average hours and cost per facility would be 6.4 hours and $219.

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.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are small businesses, small governmental jurisdictions and small non-profits. There will not be significant adverse impacts on existing area sources in any of the three source categories because the rule creates minimal burden for existing sources associated primarily with notification and reporting requirements, as the best management or equipment practices are designed to recover initial cost. EPA has determined that the cost of these requirements (estimated at less than $100 per year per facility) would not result in a significant adverse economic

impact on any facility, large or small (i.e., the cost is less than one percent of total revenues, even for small businesses).

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless, has tried to reduce the impact of this rule on small entities. The standards represent practices and controls that are common throughout the sources engaged in paint stripping and surface coating. The standards also require minimal amount of recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed in consultation with numerous individual small businesses and their representative trade associations.

D. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This decision is based on discussions with State, local, and tribal governments during site visits. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Some State, local, or tribal governments have paint stripping and/or surface coating operations (e.g., municipal fleet vehicle maintenance garages) that may be subject to the requirements of this rule. However, EPA does not believe that any of them are operated by small government entities. Small government entities are expected to contract for vehicle refinishing services when these services are needed, rather than doing this work in-house. In addition, total expenditures for all entities to comply with the rule are estimated to be less than $100 million in any year.

E. Executive Order 13132: Federalism

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

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The EPA is required by CAA section 112, to establish the standards in the rule. The rule primarily affects private industry, and does not impose significant economic costs on State or local governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order (EO) 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in EO 13175. It will not have substantial direct effects on tribal governments, or the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in EO 13175. Thus, EO 13175 does not apply to this rule.

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

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

EPA interprets EO 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to EO 13045 because it is based on technology performance and not on health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. Some of the affected sources would be expected to install and operate spray booths to comply with the rule and these would require electricity and natural gas to operate. However the increased use of energy by these sources would not have a significant effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

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

This rulemaking involves technical standards. Therefore the EPA conducted searches to identify potential voluntary consensus standards. However, we identified no such standards and none were brought to our attention in comments. The search and review results are in the docket for this rule. Therefore EPA has decided to use the following:

(1) the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992,'' to measure paint booth filter efficiency to measure the capture efficiency of paint overspray arrestors with spray-applied coatings

(2) California South Coast Air Quality Management District's (SCAQMD) methods: ''Spray Equipment Transfer Efficiency Test Procedure For Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' as methods to demonstrate the equivalency of spray gun transfer efficiency for spray guns that do not meet the definition of HVLP or electrostatic spray.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The rule establishes national standards for air quality that apply equally to all affected sources, whether or not they are located in or near minority or low-income populations. Hence there are no requirements in this rule that would disproportionately affect these populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on January 9, 2008.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (d) introductory text and adding new paragraphs (d)(7) and (d)(8) and (l)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(d) *State and Local Requirements.* The materials listed below are available at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC. Additionally, the California South Coast Air Quality Management District materials are available at *http://www.aqmd.gov/permit/spraytransferefficiency.html.*

* * * * *

(7) California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'', IBR approved for § 63.11173(e)(3).

(8) California South Coast Air Quality Management District's ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'', IBR approved for § 63.11173(e)(3).

* * * * *

(l) The following materials are available for purchase from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers at 1791 Tullie Circle, NE., Atlanta, GA 30329 or by electronic mail at *orders@ashrae.org:*

(1) American Society of Heating, Refrigerating, and Air-Conditioning Engineers Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992'', IBR approved for § 63.11173(e)(2)(i).

* * * * *

■ 3. Part 63 is amended by adding subpart HHHHHH consisting of §§ 63.11169 through 63.11180 and table 1 to read as follows:

Subpart HHHHHH National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

What This Subpart Covers

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63.11169 What is the purpose of this subpart?
63.11170 Am I subject to this subpart?
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General Compliance Requirements

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Notifications, Reports, and Records

63.11175 What notifications must I submit?
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Table to Subpart HHHHHH of Part 63

Table 1 to Subpart HHHHHH of Part 63—Applicability of General Provisions to Subpart HHHHHH of Part 63

Subpart HHHHHH—National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

What This Subpart Covers

§ 63.11169 What is the purpose of this subpart?

Except as provided in paragraph (d) of this section, this subpart establishes national emission standards for hazardous air pollutants (HAP) for area sources involved in any of the activities in paragraphs (a) through (c) of this section. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards contained herein.

(a) Paint stripping operations that involve the use of chemical strippers that contain methylene chloride (MeCl), Chemical Abstract Service number 75092, in paint removal processes;

(b) Autobody refinishing operations that encompass motor vehicle and mobile equipment spray-applied surface coating operations;

(c) Spray application of coatings containing compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni), or cadmium (Cd), collectively referred to as the target HAP to any part or product made of metal or plastic, or combinations of metal and plastic that are not motor vehicles or mobile equipment.

(d) This subpart does not apply to any of the activities described in paragraph (d)(1) through (6) of this section.

(1) Surface coating or paint stripping performed on site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State), the National Aeronautics and Space Administration, or the National Nuclear Security Administration.

(2) Surface coating or paint stripping of military munitions, as defined in § 63.11180, manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) or equipment directly and exclusively used for the purposes of transporting military munitions.

(3) Surface coating or paint stripping performed by individuals on their personal vehicles, possessions, or property, either as a hobby or for maintenance of their personal vehicles, possessions, or property. This subpart also does not apply when these operations are performed by individuals for others without compensation. An individual who spray applies surface coating to more than two motor vehicles or pieces of mobile equipment per year is subject to the requirements in this subpart that pertain to motor vehicle and mobile equipment surface coating regardless of whether compensation is received.

(4) Surface coating or paint stripping that meets the definition of ''research and laboratory activities'' in § 63.11180.

(5) Surface coating or paint stripping that meets the definition of ''quality control activities'' in § 63.11180.

(6) Surface coating or paint stripping activities that are covered under another area source NESHAP.

§ 63.11170 Am I subject to this subpart?

(a) You are subject to this subpart if you operate an area source of HAP as defined in paragraph (b) of this section, including sources that are part of a tribal, local, State, or Federal facility and you perform one or more of the activities in paragraphs (a)(1) through (3) of this section:

(1) Perform paint stripping using MeCl for the removal of dried paint (including, but not limited to, paint, enamel, varnish, shellac, and lacquer) from wood, metal, plastic, and other substrates.

(2) Perform spray application of coatings, as defined in § 63.11180, to motor vehicles and mobile equipment including operations that are located in stationary structures at fixed locations, and mobile repair and refinishing operations that travel to the customer's location, except spray coating applications that meet the definition of facility maintenance in § 63.11180. However, if you are the owner or operator of a motor vehicle or mobile equipment surface coating operation, you may petition the Administrator for an exemption from this subpart if you can demonstrate, to the satisfaction of the Administrator, that you spray apply no coatings that contain the target HAP, as defined in § 63.11180. Petitions must include a description of the coatings that you spray apply and your certification that you do not spray apply any coatings containing the target HAP. If circumstances change such that you intend to spray apply coatings containing the target HAP, you must submit the initial notification required by 63.11175 and comply with the requirements of this subpart.

(3) Perform spray application of coatings that contain the target HAP, as defined in § 63.11180, to a plastic and/or metal substrate on a part or product, except spray coating applications that meet the definition of facility maintenance or space vehicle in § 63.11180.

(b) An area source of HAP is a source of HAP that is not a major source of HAP, is not located at a major source, and is not part of a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year, or emit any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

§ 63.11171 How do I know if my source is considered a new source or an existing source?

(a) This subpart applies to each new and existing affected area source engaged in the activities listed in § 63.11170, with the exception of those activities listed in § 63.11169(d) of this subpart.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (6) of this section. Not all affected sources will have all of the items listed in paragraphs (b)(1) through (6) of this section.

(1) Mixing rooms and equipment;

(2) Spray booths, ventilated prep stations, curing ovens, and associated equipment;

(3) Spray guns and associated equipment;

(4) Spray gun cleaning equipment;

(5) Equipment used for storage, handling, recovery, or recycling of cleaning solvent or waste paint; and

(6) Equipment used for paint stripping at paint stripping facilities using paint strippers containing MeCl.

(c) An affected source is a new source if it meets the criteria in paragraphs (c)(1) and (c)(2) of this section.

(1) You commenced the construction of the source after September 17, 2007 by installing new paint stripping or surface coating equipment. If you purchase and install spray booths, enclosed spray gun cleaners, paint stripping equipment to reduce MeCl emissions, or purchase new spray guns to comply with this subpart at an existing source, these actions would not make your existing source a new source.

(2) The new paint stripping or surface coating equipment is used at a source that was not actively engaged in paint stripping and/or miscellaneous surface coating prior to September 17, 2007.

(d) An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

(e) An affected source is an existing source if it is not a new source or a reconstructed source.

General Compliance Requirements

§ 63.11172 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) and (b) of this section.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is after September 17, 2007, the compliance date is January 9, 2008.

(2) If the initial startup of your new or reconstructed affected source occurs after January 9, 2008, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is January 10, 2011.

§ 63.11173 What are my general requirements for complying with this subpart?

(a) Each paint stripping operation that is an affected area source must implement management practices to minimize the evaporative emissions of MeCl. The management practices must address, at a minimum, the practices in paragraphs (a)(1) through (5) of this section, as applicable, for your operations.

(1) Evaluate each application to ensure there is a need for paint stripping (e.g., evaluate whether it is possible to re-coat the piece without removing the existing coating).

(2) Evaluate each application where a paint stripper containing MeCl is used to ensure that there is no alternative paint stripping technology that can be used.

(3) Reduce exposure of all paint strippers containing MeCl to the air.

(4) Optimize application conditions when using paint strippers containing MeCl to reduce MeCl evaporation (e.g., if the stripper must be heated, make sure that the temperature is kept as low as possible to reduce evaporation).

(5) Practice proper storage and disposal of paint strippers containing MeCl (e.g., store stripper in closed, air-tight containers).

(b) Each paint stripping operation that has annual usage of more than one ton of MeCl must develop and implement a written MeCl minimization plan to minimize the use and emissions of MeCl. The MeCl minimization plan must address, at a minimum, the management practices specified in paragraphs (a)(1) through (5) of this section, as applicable, for your operations. Each operation must post a placard or sign outlining the MeCl minimization plan in each area where paint stripping operations subject to this subpart occur. Paint stripping operations with annual usage of more than one ton of MeCl, must comply with the management practices in paragraphs (a)(1) through (5) of this section, as applicable, but are not required to develop and implement a written MeCl minimization plan.

(c) Each paint stripping operation must maintain copies of annual usage of paint strippers containing MeCl on site at all times.

(d) Each paint stripping operation with annual usage of more than one ton of MeCl must maintain a copy of their current MeCl minimization plan on site at all times.

(e) Each motor vehicle and mobile equipment surface coating operation and each miscellaneous surface coating operation must meet the requirements in paragraphs (e)(1) through (e)(5) of this section.

(1) All painters must be certified that they have completed training in the proper spray application of surface coatings and the proper setup and maintenance of spray equipment. The minimum requirements for training and certification are described in paragraph (f) of this section. The spray application of surface coatings is prohibited by persons who are not certified as having completed the training described in paragraph (f) of this section. The requirements of this paragraph do not apply to the students of an accredited surface coating training program who are under the direct supervision of an instructor who meets the requirements of this paragraph.

(2) All spray-applied coatings must be applied in a spray booth, preparation station, or mobile enclosure that meets the requirements of paragraph (e)(2)(i) of this section and either paragraph (e)(2)(ii), (e)(2)(iii), or (e)(2)(iv) of this section.

(i) All spray booths, preparation stations, and mobile enclosures must be fitted with a type of filter technology that is demonstrated to achieve at least 98-percent capture of paint overspray. The procedure used to demonstrate filter efficiency must be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992'' (incorporated by reference, see § 63.14 of subpart A of this part). The test coating for measuring filter efficiency shall be a high solids bake enamel delivered at a rate of at least 135 grams per minute from a conventional (non-HVLP) air-atomized spray gun operating at 40 pounds per square inch (psi) air pressure; the air flow rate across the filter shall be 150 feet per minute. Owners and operators may use published filter efficiency data provided by filter vendors to demonstrate compliance with this requirement and are not required to perform this measurement. The requirements of this paragraph do not apply to waterwash spray booths that are operated and maintained according to the manufacturer's specifications.

(ii) Spray booths and preparation stations used to refinish complete motor vehicles or mobile equipment must be fully enclosed with a full roof, and four complete walls or complete side curtains, and must be ventilated at negative pressure so that air is drawn into any openings in the booth walls or preparation station curtains. However, if a spray booth is fully enclosed and has seals on all doors and other openings and has an automatic pressure balancing system, it may be operated at up to, but

not more than, 0.05 inches water gauge positive pressure.

(iii) Spray booths and preparation stations that are used to coat miscellaneous parts and products or vehicle subassemblies must have a full roof, at least three complete walls or complete side curtains, and must be ventilated so that air is drawn into the booth. The walls and roof of a booth may have openings, if needed, to allow for conveyors and parts to pass through the booth during the coating process.

(iv) Mobile ventilated enclosures that are used to perform spot repairs must enclose and, if necessary, seal against the surface around the area being coated such that paint overspray is retained within the enclosure and directed to a filter to capture paint overspray.

(3) All spray-applied coatings must be applied with a high volume, low pressure (HVLP) spray gun, electrostatic application, airless spray gun, air-assisted airless spray gun, or an equivalent technology that is demonstrated by the spray gun manufacturer to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator. The procedure used to demonstrate that spray gun transfer efficiency is equivalent to that of an HVLP spray gun must be equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (incorporated by reference, see § 63.14 of subpart A of this part). The requirements of this paragraph do not apply to painting performed by students and instructors at paint training centers. The requirements of this paragraph do not apply to the surface coating of aerospace vehicles that involves the coating of components that normally require the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; to the application of coatings on aerospace vehicles that contain fillers that adversely affect atomization with HVLP spray guns; or to the application of coatings on aerospace vehicles that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.).

(4) All paint spray gun cleaning must be done so that an atomized mist or spray of gun cleaning solvent and paint residue is not created outside of a container that collects used gun cleaning solvent. Spray gun cleaning may be done with, for example, hand cleaning of parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed spray gun washer. A combination of non-atomizing methods may also be used.

(5) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency, may choose to grant you permission to use an alternative to the emission standards in this section after you have requested approval to do so according to § 63.6(g)(2).

(f) Each owner or operator of an affected miscellaneous surface coating source must ensure and certify that all new and existing personnel, including contract personnel, who spray apply surface coatings, as defined in § 63.11180, are trained in the proper application of surface coatings as required by paragraph (e)(1) of this section. The training program must include, at a minimum, the items listed in paragraphs (f)(1) through (f)(3) of this section.

(1) A list of all current personnel by name and job description who are required to be trained;

(2) Hands-on and classroom instruction that addresses, at a minimum, initial and refresher training in the topics listed in paragraphs (f)(2)(i) through (2)(iv) of this section.

(i) Spray gun equipment selection, set up, and operation, including measuring coating viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.

(ii) Spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.

(iii) Routine spray booth and filter maintenance, including filter selection and installation.

(iv) Environmental compliance with the requirements of this subpart.

(3) A description of the methods to be used at the completion of initial or refresher training to demonstrate, document, and provide certification of successful completion of the required training. Owners and operators who can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training required in paragraph (f)(2) of this section are not required to provide the initial training required by that paragraph to these painters.

(g) As required by paragraph (e)(1) of this section, all new and existing personnel at an affected motor vehicle and mobile equipment or miscellaneous surface coating source, including contract personnel, who spray apply surface coatings, as defined in § 63.11180, must be trained by the dates specified in paragraphs (g)(1) and (2) of this section. Employees who transfer within a company to a position as a painter are subject to the same requirements as a new hire.

(1) If your source is a new source, all personnel must be trained and certified no later than 180 days after hiring or no later than July 7, 2008, whichever is later. Painter training that was completed within five years prior to the date training is required, and that meets the requirements specified in paragraph (f)(2) of this section satisfies this requirement and is valid for a period not to exceed five years after the date the training is completed.

(2) If your source is an existing source, all personnel must be trained and certified no later than 180 days after hiring or no later than January 10, 2011, whichever is later. Painter training that was completed within five years prior to the date training is required, and that meets the requirements specified in paragraph (f)(2) of this section satisfies this requirement and is valid for a period not to exceed five years after the date the training is completed.

(3) Training and certification will be valid for a period not to exceed five years after the date the training is completed, and all personnel must receive refresher training that meets the requirements of this section and be re-certified every five years.

§ 63.11174 What parts of the General Provisions apply to me?

(a) Table 1 of this subpart shows which parts of the General Provisions in subpart A apply to you.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

Notifications, Reports, and Records

§ 63.11175 What notifications must I submit?

(a) Initial Notification. If you are the owner or operator of a paint stripping operation using paint strippers containing MeCl and/or a surface coating operation subject to this subpart, you must submit the initial notification required by § 63.9(b). For a new affected source, you must submit the Initial Notification no later than 180 days after initial startup or July 7, 2008, whichever is later. For an existing affected source, you must submit the initial notification no later than January 11, 2010. The initial notification must provide the information specified in paragraphs (a)(1) through (8) of this section.

(1) The company name, if applicable.

(2) The name, title, street address, telephone number, e-mail address (if available), and signature of the owner and operator, or other certifying company official;

(3) The street address (physical location) of the affected source and the street address where compliance records are maintained, if different. If the source is a motor vehicle or mobile equipment surface coating operation that repairs vehicles at the customer's location, rather than at a fixed location, such as a collision repair shop, the notification should state this and indicate the physical location where records are kept to demonstrate compliance;

(4) An identification of the relevant standard (i.e., this subpart, 40 CFR part 63, subpart HHHHHH);

(5) A brief description of the type of operation as specified in paragraph (a)(5)(i) or (ii) of this section.

(i) For all surface coating operations, indicate whether the source is a motor vehicle and mobile equipment surface coating operation or a miscellaneous surface coating operation, and include the number of spray booths and preparation stations, and the number of painters usually employed at the operation.

(ii) For paint stripping operations, identify the method(s) of paint stripping employed (e.g., chemical, mechanical) and the substrates stripped (e.g., wood, plastic, metal).

(6) Each paint stripping operation must indicate whether they plan to annually use more than one ton of MeCl after the compliance date.

(7) A statement of whether the source is already in compliance with each of the relevant requirements of this subpart, or whether the source will be brought into compliance by the compliance date. For paint stripping operations, the relevant requirements that you must evaluate in making this determination are specified in § 63.11173(a) through (d) of this subpart. For surface coating operations, the relevant requirements are specified in § 63.11173(e) through (g) of this subpart.

(8) If your source is a new source, you must certify in the initial notification whether the source is in compliance with each of the requirements of this subpart. If your source is an existing source, you may certify in the initial notification that the source is already in compliance. If you are certifying in the initial notification that the source is in compliance with the relevant requirements of this subpart, then include also a statement by a responsible official with that official's name, title, phone number, e-mail address (if available) and signature, certifying the truth, accuracy, and completeness of the notification, a statement that the source has complied with all the relevant standards of this subpart, and that this initial notification also serves as the notification of compliance status.

(b) Notification of Compliance Status. If you are the owner or operator of a new source, you are not required to submit a separate notification of compliance status in addition to the initial notification specified in paragraph (a) of this subpart provided you were able to certify compliance on the date of the initial notification, as part of the initial notification, and your compliance status has not since changed. If you are the owner or operator of any existing source and did not certify in the initial notification that your source is already in compliance as specified in paragraph (a) of this section, then you must submit a notification of compliance status. You must submit a Notification of Compliance Status on or before March 11, 2011. You are required to submit the information specified in paragraphs (b)(1) through (4) of this section with your Notification of Compliance Status:

(1) Your company's name and the street address (physical location) of the affected source and the street address where compliance records are maintained, if different.

(2) The name, title, address, telephone, e-mail address (if available) and signature of the owner and operator, or other certifying company official, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance. For paint stripping operations, the relevant requirements that you must evaluate in making this determination are specified in § 63.11173(a) through (d). For surface coating operations, the relevant requirements are specified in § 63.11173(e) through (g).

(3) The date of the Notification of Compliance Status.

(4) If you are the owner or operator of an existing affected paint stripping source that annually uses more than one ton of MeCl, you must submit a statement certifying that you have developed and are implementing a written MeCl minimization plan in accordance with § 63.11173(b).

§ 63.11176 What reports must I submit?

(a) Annual Notification of Changes Report. If you are the owner or operator of a paint stripping, motor vehicle or mobile equipment, or miscellaneous surface coating affected source, you are required to submit a report in each calendar year in which information previously submitted in either the initial notification required by § 63.11175(a), Notification of Compliance, or a previous annual notification of changes report submitted under this paragraph, has changed. Deviations from the relevant requirements in § 63.11173(a) through (d) or § 63.11173(e) through (g) on the date of the report will be deemed to be a change. This includes notification when paint stripping affected sources that have not developed and implemented a written MeCl minimization plan in accordance with § 63.11173(b) used more than one ton of MeCl in the previous calendar year. The annual notification of changes report must be submitted prior to March 1 of each calendar year when reportable changes have occurred and must include the information specified in paragraphs (a)(1) through (2) of this section.

(1) Your company's name and the street address (physical location) of the affected source and the street address where compliance records are maintained, if different.

(2) The name, title, address, telephone, e-mail address (if available) and signature of the owner and operator, or other certifying company official, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart or an explanation of any noncompliance and a description of corrective actions being taken to achieve compliance.

(b) If you are the owner or operator of a paint stripping affected source that has

not developed and implemented a written MeCl minimization plan in accordance with § 63.11173(b) of this subpart, you must submit a report for any calendar year in which you use more than one ton of MeCl. This report must be submitted no later than March 1 of the following calendar year. You must also develop and implement a written MeCl minimization plan in accordance with § 63.11173(b) no later than December 31. You must then submit a Notification of Compliance Status report containing the information specified in § 63.11175(b) by March 1 of the following year and comply with the requirements for paint stripping operations that annually use more than one ton of MeCl in §§ 63.11173(d) and 63.11177(f).

§ 63.11177 What records must I keep?

If you are the owner or operator of a surface coating operation, you must keep the records specified in paragraphs (a) through (d) and (g) of this section. If you are the owner or operator of a paint stripping operation, you must keep the records specified in paragraphs (e) through (g) of this section, as applicable.

(a) Certification that each painter has completed the training specified in § 63.11173(f) with the date the initial training and the most recent refresher training was completed.

(b) Documentation of the filter efficiency of any spray booth exhaust filter material, according to the procedure in § 63.11173(e)(3)(i).

(c) Documentation from the spray gun manufacturer that each spray gun with a cup capacity equal to or greater than 3.0 fluid ounces (89 cc) that does not meet the definition of an HVLP spray gun, electrostatic application, airless spray gun, or air assisted airless spray gun, has been determined by the Administrator to achieve a transfer efficiency equivalent to that of an HVLP spray gun, according to the procedure in § 63.11173(e)(4).

(d) Copies of any notification submitted as required by § 63.11175 and copies of any report submitted as required by § 63.11176.

(e) Records of paint strippers containing MeCl used for paint stripping operations, including the MeCl content of the paint stripper used. Documentation needs to be sufficient to verify annual usage of paint strippers containing MeCl (e.g., material safety data sheets or other documentation provided by the manufacturer or supplier of the paint stripper, purchase receipts, records of paint stripper usage, engineering calculations).

(f) If you are a paint stripping source that annually uses more than one ton of MeCl you are required to maintain a record of your current MeCl minimization plan on site for the duration of your paint stripping operations. You must also keep records of your annual review of, and updates to, your MeCl minimization plan.

(g) Records of any deviation from the requirements in §§ 63.11173, 63.11174, 63.11175, or 63.11176. These records must include the date and time period of the deviation, and a description of the nature of the deviation and the actions taken to correct the deviation.

(h) Records of any assessments of source compliance performed in support of the initial notification, notification of compliance status, or annual notification of changes report.

§ 63.11178 In what form and for how long must I keep my records?

(a) If you are the owner or operator of an affected source, you must maintain copies of the records specified in § 63.11177 for a period of at least five years after the date of each record. Copies of records must be kept on site and in a printed or electronic form that is readily accessible for inspection for at least the first two years after their date, and may be kept off-site after that two year period.

Other Requirements and Information

§ 63.11179 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authority in § 63.11173(e)(5) will not be delegated to State, local, or tribal agencies.

§ 63.11180 What definitions do I need to know?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, and in this section as follows:

Additive means a material that is added to a coating after purchase from a supplier (e.g., catalysts, activators, accelerators).

Administrator means, for the purposes of this rulemaking, the Administrator of the U.S. Environmental Protection Agency or the State or local agency that is granted delegation for implementation of this subpart.

Aerospace vehicle or component means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

Airless and air-assisted airless spray mean any paint spray technology that relies solely on the fluid pressure of the paint to create an atomized paint spray pattern and does not apply any atomizing compressed air to the paint before it leaves the paint nozzle. Air-assisted airless spray uses compressed air to shape and distribute the fan of atomized paint, but still uses fluid pressure to create the atomized paint.

Appurtenance means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lamp posts; partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

Architectural coating means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, or oil, from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means, for the purposes of this subpart, a material spray-applied to a substrate for decorative, protective, or functional purposes. For the purposes of this subpart, coating does not include the following materials:

(1) Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances.

(2) Paper film or plastic film that may be pre-coated with an adhesive by the film manufacturer.

(3) Adhesives, sealants, maskants, or caulking materials.

(4) Temporary protective coatings, lubricants, or surface preparation materials.

(5) In-mold coatings that are spray-applied in the manufacture of reinforced plastic composite parts.

Compliance date means the date by which you must comply with this subpart.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart.

Dry media blasting means abrasive blasting using dry media. Dry media blasting relies on impact and abrasion to remove paint from a substrate. Typically, a compressed air stream is used to propel the media against the coated surface.

Electrostatic application means any method of coating application where an electrostatic attraction is created between the part to be coated and the atomized paint particles.

Equipment cleaning means the use of an organic solvent to remove coating residue from the surfaces of paint spray guns and other painting related equipment, including, but not limited to stir sticks, paint cups, brushes, and spray booths.

Facility maintenance means, for the purposes of this subpart, surface coating performed as part of the routine repair or renovation of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity. *Facility maintenance* also includes surface coating associated with the installation of new equipment or structures, and the application of any surface coating as part of janitorial activities. *Facility maintenance* includes the application of coatings to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. *Facility maintenance* also includes the refinishing of mobile equipment in the field or at the site where they are used in service and at which they are intended to remain indefinitely after refinishing. Such mobile equipment includes, but is not limited to, farm equipment and mining equipment for which it is not practical or feasible to move to a dedicated mobile equipment refinishing facility. Such mobile equipment also includes items, such as fork trucks, that are used in a manufacturing facility and which are refinished in that same facility. *Facility maintenance* does not include surface coating of motor vehicles, mobile equipment, or items that routinely leave and return to the facility, such as delivery trucks, rental equipment, or containers used to transport, deliver, distribute, or dispense commercial products to customers, such as compressed gas canisters.

High-volume, low-pressure (HVLP) spray equipment means spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge (psig) air atomizing pressure measured dynamically at the center of the air cap and at the air horns.

Initial startup means the first time equipment is brought online in a paint stripping or surface coating operation, and paint stripping or surface coating is first performed.

Materials that contain HAP or *HAP-containing materials* mean, for the purposes of this subpart, materials that contain 0.1 percent or more by mass of any individual HAP that is an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4), or 1.0 percent or more by mass for any other individual HAP.

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense (DoD) or for the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the National Nuclear Security Administration (NNSA), U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, biological weapons, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, nonnuclear components of nuclear weapons, wholly inert ammunition products, and all devices and components of any items listed in this definition.

Miscellaneous parts and/or products means any part or product made of metal or plastic, or combinations of metal and plastic. Miscellaneous parts and/or products include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; automobiles and light duty trucks at automobile and light duty truck assembly plants; boats; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products.

Miscellaneous surface coating operation means the collection of equipment used to apply surface coating to miscellaneous parts and/or products made of metal or plastic, including applying cleaning solvents to prepare the surface before coating application, mixing coatings before application, applying coating to a surface, drying or curing the coating after application, and cleaning coating application equipment, but not plating. A single surface coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating material is applied to a given part. A surface coating operation includes all other steps (such as surface preparation with solvent and equipment cleaning) in the affected source where HAP are emitted from the coating of a part. The use of solvent to clean parts (for example, to remove grease during a mechanical repair) does not constitute a miscellaneous surface coating operation if no coatings are applied. A single affected source may have multiple surface coating operations. Surface coatings applied to wood, leather, rubber, ceramics, stone, masonry, or substrates other than metal and plastic are not considered miscellaneous surface coating operations for the purposes of this subpart.

Mobile equipment means any device that may be drawn and/or driven on a roadway including, but not limited to, heavy-duty trucks, truck trailers, fleet delivery trucks, buses, mobile cranes, bulldozers, street cleaners, agriculture equipment, motor homes, and other recreational vehicles (including camping trailers and fifth wheels).

Motor vehicle means any self-propelled vehicle, including, but not limited to, automobiles, light duty trucks, golf carts, vans, and motorcycles.

Motor vehicle and mobile equipment surface coating means the spray application of coatings to assembled motor vehicles or mobile equipment. For the purposes of this subpart, it does not include the surface coating of motor vehicle or mobile equipment parts or

subassemblies at a vehicle assembly plant or parts manufacturing plant.

Non-HAP solvent means, for the purposes of this subpart, a solvent (including thinners and cleaning solvents) that contains less than 0.1 percent by mass of any individual HAP that is an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and less than 1.0 percent by mass for any other individual HAP.

Paint stripping and/or miscellaneous surface coating source or facility means any shop, business, location, or parcel of land where paint stripping or miscellaneous surface coating operations are conducted.

Paint stripping means the removal of dried coatings from wood, metal, plastic, and other substrates. A single affected source may have multiple paint stripping operations.

Painter means any person who spray applies coating.

Plastic refers to substrates containing one or more resins and may be solid, porous, flexible, or rigid. Plastics include fiber reinforced plastic composites.

Protective oil means organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Quality control activities means surface coating or paint stripping activities that meet all of the following criteria:

(1) The activities associated with a surface coating or paint stripping operation are intended to detect and correct defects in the final product by selecting a limited number of samples from the operation, and comparing the samples against specific performance criteria.

(2) The activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; for example, parts that are surface coated or stripped are not sold and do not leave the facility.

(3) The activities are not a normal part of the surface coating or paint stripping operation; for example, they do not include color matching activities performed during a motor vehicle collision repair.

(4) The activities do not involve surface coating or stripping of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity; that is, the activities are not facility maintenance.

Research and laboratory activities means surface coating or paint stripping activities that meet one of the following criteria:

(1) Conducted at a laboratory to analyze air, soil, water, waste, or product samples for contaminants, or environmental impact.

(2) Activities conducted to test more efficient production processes, including alternative paint stripping or surface coating materials or application methods, or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit.

(3) Activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel, the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit.

Solvent means a fluid containing organic compounds used to perform paint stripping, surface prep, or cleaning of surface coating equipment.

Space Vehicle means vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the Space Shuttle System (including orbiter, external tanks, and solid rocket boosters).

Spray-applied coating operations means coatings that are applied using a hand-held device that creates an atomized mist of coating and deposits the coating on a substrate. For the purposes of this subpart, spray-applied coatings do not include the following materials or activities:

(1) Coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters).

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens.

(3) Thermal spray operations (also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names) in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact.

Surface preparation or *Surface prep* means use of a cleaning material on a portion of or all of a substrate prior to the application of a coating.

Target HAP are compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni), or cadmium (Cd).

Target HAP containing coating means a spray-applied coating that contains any individual target HAP that is an Occupational Safety and Health Administration (OSHA)–defined carcinogen as specified in 29 CFR 1910.1200(d)(4) at a concentration greater than 0.1 percent by mass, or greater than 1.0 percent by mass for any other individual target HAP compound. For the purpose of determining whether materials you use contain the target HAP compounds, you may rely on formulation data provided by the manufacturer or supplier, such as the material safety data sheet (MSDS), as long as it represents each target HAP compound in the material that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other target HAP compounds.

Transfer efficiency means the amount of coating solids adhering to the object being coated divided by the total amount of coating solids sprayed, expressed as a percentage. Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Truck bed liner coating means any coating, excluding color coats, labeled and formulated for application to a truck bed to protect it from surface abrasion.

TABLE 1 TO SUBPART HHHHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHHH OF PART 63

Citation	Subject	Applicable to subpart HHHHHH	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability of subpart HHHHHH is also specified in § 63.11170.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	Yes	(63.11174(b) of Subpart HHHHHH exempts area sources from the obligation to obtain Title V operating permits.
§ 63.1(c)(5)	Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program to Major Sources Before Relevant Standard is Set.	No	(63.11174(b) of Subpart HHHHHH exempts area sources from the obligation to obtain Title V operating permits.
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.11180.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5	Construction/Reconstruction of major sources.	No	Subpart HHHHHH applies only to area sources.
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.11172 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	§ 63.11172 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	No	No startup, shutdown, and malfunction plan is required by subpart HHHHHH.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart HHHHHH does not establish opacity or visible emission standards.
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7	Performance Testing Requirements	No	No performance testing is required by subpart HHHHHH.
§ 63.8	Monitoring Requirements	No	Subpart HHHHHH does not require the use of continuous monitoring systems.
§ 63.9(a)–(d)	Notification Requirements	Yes	§ 63.11175 specifies notification requirements.
§ 63.9(e)	Notification of Performance Test	No	Subpart HHHHHH does not require performance tests.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart HHHHHH does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Subpart HHHHHH does not require the use of continuous monitoring systems.
§ 63.9(h)	Notification of Compliance Status	No	§ 63.11175 specifies the dates and required content for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes	§ 63.11176(a) specifies the dates for submitting the notification of changes report.
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in § 63.11177.
§ 63.10(b)(2)(i)–(xi)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	No	Subpart HHHHHH does not require startup, shutdown, and malfunction plans, or CMS.
§ 63.10(b)(2)(xii)	Waiver of recordkeeping requirements	Yes.	
§ 63.10(b)(2)(xiii)	Alternatives to the relative accuracy test	No	Subpart HHHHHH does not require the use of CEMS.
§ 63.10(b)(2)(xiv)	Records supporting notifications	Yes.	

TABLE 1 TO SUBPART HHHHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHHH OF PART 63—Continued

Citation	Subject	Applicable to subpart HHHHHH	Explanation
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes	
§ 63.10(c)	Additional Recordkeeping Requirements for Sources with CMS.	No	Subpart HHHHHH does not require the use of CMS.
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.11176.
§ 63.10(d)(2)–(3)	Report of Performance Test Results, and Opacity or Visible Emissions Observations.	No	Subpart HHHHHH does not require performance tests, or opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	No	Subpart HHHHHH does not require startup, shutdown, and malfunction reports.
§ 63.10(e)	Additional Reporting requirements for Sources with CMS.	No	Subpart HHHHHH does not require the use of CMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart HHHHHH does not require the use of flares.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.	
§ 63.14	Incorporation by Reference	Yes	Test methods for measuring paint booth filter efficiency and spray gun transfer efficiency in § 63.11173(e)(2) and (3) are incorporated and included in § 63.14.
§ 63.15	Availability of Information/Confidentiality	Yes.	
§ 63.16(a)	Performance Track Provisions—reduced reporting.	Yes.	
§ 63.16(b)–(c)	Performance Track Provisions—reduced reporting.	No	Subpart HHHHHH does not establish numerical emission limits.

[FR Doc. E7–24718 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
January 9, 2008

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Facilities Design, Connections and Maintenance Reliability Standards; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM07–3–000; Order No. 705]

Facilities Design, Connections and Maintenance Reliability Standards

Issued December 27, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission approves three Reliability Standards concerning Facilities Design, Connections and Maintenance that were developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. Further, pursuant to section 215(d)(5), we direct the ERO to develop a modification to one of the three Reliability Standards that are being approved as mandatory and enforceable. The three FAC Reliability Standards, designated FAC–010–1, FAC–011–1 and FAC–014–1, require planning authorities and reliability coordinators to establish methodologies to determine system operating limits for the Bulk-Power System in the planning and operation horizons. The Commission also approves a regional difference for the Western Interconnection administered by the Western Electricity Coordinating Council which is incorporated into FAC–010–1 and FAC–011–1. In addition, the Commission accepts three new terms for the NERC Glossary of Terms Used in Reliability Standards, remands another proposed term, and directs the ERO to submit modifications to its proposed Violation Risk Factors consistent with our prior orders.

DATES: *Effective Date:* The approval granted in this order becomes effective due February 8, 2008.

FOR FURTHER INFORMATION CONTACT: Christy Walsh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523.

Robert Snow (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6716.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

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I. Introduction

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves three Reliability Standards concerning Facilities Design, Connections and Maintenance (FAC) that were developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. Further, pursuant to section 215(d)(5), we direct the ERO to develop a modification to one of the three Reliability Standards that are being approved as mandatory and enforceable. The three FAC Reliability Standards, designated FAC–010–1, FAC–011–1 and FAC–014–1, require planning authorities and reliability coordinators to establish methodologies to determine system operating limits (SOLs) for the Bulk-Power System in the planning and operation horizons. The Commission also approves a regional difference for the Western Interconnection administered by the Western Electricity Coordinating Council (WECC) which is incorporated into FAC–010–1 and FAC–011–1. In addition, the Commission accepts three

new terms for the NERC Glossary of Terms Used in Reliability Standards, remands another proposed term, and directs the ERO to submit modifications to its proposed Violation Risk Factors consistent with our prior orders.

II. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted.[1] EPAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[2]

3. On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.[4] The ERO is required to develop Reliability Standards, which are subject to Commission review and approval. Approved Reliability Standards apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

B. NERC's Proposed FAC Reliability Standards

4. On November 15, 2006, NERC filed 20 revised Reliability Standards and three new Reliability Standards for Commission approval. The Commission addressed the 20 revised Reliability Standards in Order No. 693[5] and established this rulemaking proceeding to review the three new Reliability Standards.

5. NERC states that the three new Reliability Standards ensure that SOLs and interconnection reliability operating limits (IROLs)[6] are developed using consistent methods and that those methods contain certain essential elements. NERC designated the new Reliability Standards as follows:

FAC–010–1 (System Operating Limits Methodology for the Planning Horizon);
FAC–011–1 (System Operating Limits Methodology for the Operations Horizon); and
FAC–014–1 (Establish and Communicate System Operating Limits).

6. NERC explains that FAC–010–1 requires each planning authority to document its methodology for determining SOLs and share its methodology with reliability entities. FAC–010–1 provides that the planning authority shall have a documented SOL methodology within its planning area that is applicable to the planning time horizon, does not exceed facility ratings, and includes a description of how to identify the subset of SOLs that qualify as IROLs. Requirement R2 of the Reliability Standard and its subparts identify specific considerations that must be included in the methodology.

7. Reliability Standard FAC–011–1 requires each reliability coordinator to develop a SOL methodology for the operations time frame. This methodology must determine whether certain stability limits that are derived from multiple contingency analysis and provided by the planning authority are applicable in the operating horizon. Requirement R2 of FAC–011–1 identifies specific considerations that must be included in the methodology in both a pre-contingency state and following one or multiple contingencies. The provisions of Requirement R2 of FAC–011–1 are the same as those in Requirement R2 of FAC–010–1, except for Requirement R2.3.2 of FAC–011–1, discussed below, which addresses load shedding when studies underestimate real time conditions.

8. Both FAC–010–1 and FAC–011–1 include an Interconnection-wide regional difference for the Western Interconnection administered by WECC. These regional differences incorporate a more detailed methodology to determine SOLs based on specified multiple contingencies. They also provide that the ''Western Interconnection may make changes'' to the contingencies required to be studied and/or the required responses to contingencies for specific facilities.

9. Reliability Standard FAC–014–1 requires each reliability coordinator, planning authority, transmission planner, and transmission operator to develop and communicate SOL limits in accordance with the methodologies developed pursuant to FAC–010–1 and FAC–011–1. FAC–014–1 requires the reliability coordinator to ensure that SOLs are established for its ''reliability coordinator area'' and that the SOLs are consistent with its SOL methodology. It provides that each transmission operator, planning authority, and transmission planner must establish SOLs as directed by its reliability coordinator that are consistent with the reliability coordinator's methodology. Further, FAC–014–1 requires the reliability coordinator, planning authority, and transmission planner to provide its SOLs to those entities that have a reliability-related need.[7]

C. Notice of Proposed Rulemaking

10. On August 13, 2007, the Commission issued a NOPR proposing to approve Reliability Standards FAC–010–1, FAC–011–1, and FAC–014–1 as mandatory and enforceable Reliability Standards. The Commission also proposed to approve regional differences to FAC–010–1 and FAC–011–1 applicable to the Western Interconnection. In addition, the Commission sought ERO clarification and public comment on whether the FAC Reliability Standards are consistent with the Commission's transmission reform efforts in Order No. 890[8] and with the transmission planning (TPL) Reliability Standards. The NOPR also sought ERO clarification and public comment on the scope of operating contingencies and appropriate responses under the Reliability Standard requirements, on the Commission's proposal to approve the WECC regional difference, and on the WECC contingency designation and revision process should be incorporated into the Reliability Standard. Further, the Commission proposed certain

[1] Energy Policy Act of 2005, Pub. L. No 109–58, Title XII, Subtitle A, section 1211(a), 119 Stat. 594, 941 (2005), 16 U.S.C. 824o (2000 & Supp. V 2005).

[2] FPA section 215(e), 16 U.S.C. 824o(e) (2000 & Supp. V 2005).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006) (ERO Rehearing Order).

[5] On March 16, 2007, the Commission approved 83 of the 107 Reliability Standards initially filed by NERC. *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. and Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] As discussed later, NERC has proposed the following definition of IROL, ''a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading Outages that adversely impact the reliability of the Bulk Electric System.''

[7] The Notice of Proposed Rulemaking (NOPR) provides additional background on the content of each FAC Reliability Standard. *Facilities, Design, Connections and Maintenance Mandatory Reliability Standards,* Notice of Proposed Rulemaking, 72 FR 160 (Aug. 20, 2007), FERC Stats. And Regs. ¶ 32,622, at P 9–36 (Aug. 13, 2007).

[8] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

clarifications to NERC's glossary revisions.

11. After submitting these FAC Reliability Standards, NERC filed proposed Violation Risk Factors that correspond to each Requirement of the proposed Reliability Standards.[9] According to NERC, Violation Risk Factors measure the relative risk to the Bulk-Power System associated with the violation of Requirements within the Reliability Standards.

Procedural Matters

12. The Commission required that comments be filed within 30 days after publication in the **Federal Register**, or September 19, 2007. Approximately 21 entities filed comments, including several late-filed comments. The Commission accepts these late filed comments. Appendix B provides a list of the commenters.

III. Discussion

13. This order approves the FAC Reliability Standards, as discussed below.[10] In approving the FAC Reliability Standards, the Commission concludes that they are just, reasonable, not unduly discriminatory or preferential, and in the public interest. These three Reliability Standards serve an important reliability purpose in ensuring that SOLs used in the reliable planning and operation of the Bulk-Power System are determined based on an established methodology. Moreover, they clearly identify the entities to which they apply and contain clear and enforceable requirements. The Commission also accepts the WECC regional differences contained in FAC–010–1 and FAC–011–1. The Commission will discuss particular issues below as appropriate.[11]

14. The Commission also directs NERC to modify FAC–011–1, Requirement 2.3. In addition, we accept NERC's proposals to add or revise the following terms in the NERC glossary: ''Delayed Fault Clearing,'' ''Interconnection Reliability Operating Limit (IROL),'' and ''Interconnection Reliability Operating Limit T_v (IROL T_v).'' [12] However, for the reasons explained below, we remand NERC's definition of ''Cascading Outages'' subject to NERC refiling. Finally, with respect to the Violation Risk Factors, we accept certain Violation Risk Factors but direct NERC to revise the Violation Risk Factors that are inconsistent with the Commission's Violation Risk Factor guidelines, as discussed below.

A. General Matters

15. Several commenters sought clarification of the Commission's procedural approach, arguing that changes to Reliability Standards and glossary terms should be made through the NERC Reliability Standards development process.[13] Some commenters question the Commission's authority to require NERC to make specific revisions to the Reliability Standards and glossary terms.[14]

Commission Determination

16. In response to commenters' concerns about the Commission's procedural approach, section 215(d) of the FPA provides that the Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed Reliability Standard or modification to a Reliability Standard; and the Commission fully intends to faithfully implement this provision. Further, the Commission affirms the approach set forth in Order No. 693 that:

> [A] direction for modification should not be so overly prescriptive as to preclude consideration of viable alternatives in the ERO's Reliability Standards development process. However, in identifying a specific matter to be addressed in a modification to a Reliability Standard, it is important that the Commission provide sufficient guidance so that the ERO has an understanding of the Commission's concerns and an appropriate but not necessarily, exclusive, outcome to address those concerns.[15]

17. Thus, in directing modification to FAC–011–1, while we provide specific details regarding the Commission's expectations, we intend by doing so to provide useful guidance to assist in the Reliability Standards development process, not to impede it.[16] As stated in Order No. 693, this is consistent with statutory language that authorizes the Commission to order the ERO to submit a modification ''that addresses a specific matter'' if the Commission considers it appropriate to carry out section 215 of the FPA.[17] Consistent with Order No. 693, while the Commission offers a specific approach to address our concern with FAC–011–1, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal.[18]

B. Specific Issues

1. Consistency With Order No. 890

18. The NOPR stated the Commission's concern that the FAC Reliability Standards called for the development of distinct methodologies to calculate system transfer limits and that these methodologies might differ from those used in the planning and operations horizons to develop available transfer capability (ATC) and total transfer capability (TTC) transfer limits. The NOPR explained that Order No. 890 amended the *pro forma* open access transmission tariff (OATT) to provide greater specificity to reduce opportunities for undue discrimination and increase transparency in the rules applicable to planning and use of the transmission system.[19] Specifically, Order No. 890 requires the consistent use of assumptions underlying operational planning for short-term ATC calculations and expansion planning for long-term ATC calculations.[20]

19. The NOPR noted that FAC–010–1 requires each planning authority to document its methods for determining system operating limits or SOLs for the planning horizon. However, the SOLs may affect ATC by determining transmission path or system interface limits. Furthermore, the NOPR noted that use of multiple contingency analyses would generally result in lower SOLs. The Commission expressed

[9] *See* NERC, Request for Approval of Violation Risk Factors for Version 1 Reliability Standards, Docket No. RR07–10–000, Exh. A (March 23, 2007); and NERC, Request for Approval of Supplemental Violation Risk Factors for Version 1 Reliability Standards, Docket No. RR07–12–000, Exh. A (May 4, 2007). In its orders addressing the violation risk factors, the Commission addressed only those Violation Risk Factors pertaining to the 83 Reliability Standards approved in Order No. 693. *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 14 (2007) (*Violation Risk Factor Order*) and *North American Electric Reliability Corp.*, 119 FERC ¶ 61,321, at P 4 (2007) (*Supplemental VRF Order*).

[10] The three Reliability Standards will not be published in revised Commission regulations, but instead are available in Appendix C through the Commission's eLibrary document retrieval system in Docket No. RM07–3–000 and will be posted on NERC's *Web site, https://standards.nerc.net/.*

[11] In addition to the issues discussed, the NOPR requested that NERC clarify its proposals to replace the term ''regional reliability organization'' with the term Regional Entity and to incorporate references to the ''planning coordinator'' function into the Reliability Standards. We are satisfied with the explanations provided by NERC.

[12] In Order No. 693 at P 1893–98, the Commission approved the NERC glossary, directing specific modifications to the document.

[13] *See* Progress Energy Comments at 2 (citing Order No. 672 at P 40, 249 and 344); *see also* EEI and APPA, and NRECA Comments.

[14] *See, e.g.,* NRECA Comments.

[15] Order No. 693 at P 185.

[16] Order No. 693 at P 186.

[17] FPA section 215(d)(5), 16 U.S.C. 824o(d)(5) (2000 & Supp. V 2005).

[18] Order No. 693 at P 186.

[19] NOPR at P 18–19 (citing Order No. 890 at P 290–95).

[20] Order No. 890 at P 290–95.

concern about potentially disparate results for calculating transfer limits under two methodologies, the first being the proposed Reliability Standard FAC–010–1 methodology for calculation of SOLs for the planning horizon and another being the methodology for calculating long-term ATC pursuant to NERC's Modeling, Data, and Analysis (MOD) Reliability Standards. Therefore, the NOPR requested comment whether having separate methodologies was consistent with the Order No. 890 requirement to use consistent assumptions.

20. The Commission had previously found that calculations of TTC transfer limits calculated under other FAC Reliability Standards, specifically FAC–012–1, were essentially the same as transfer limits calculated for modeling purposes under the MOD Reliability Standard, MOD–001–1, and therefore required the calculations to be addressed under a single Reliability Standard. The NOPR set out two specific concerns, the first being whether there is a potential for undue discrimination as a result of the use of single and multiple contingencies in different contexts. The second concern was whether the use of different approaches to transfer limit calculations under FAC–010–1, under review in this proceeding on the one hand, and FAC–012–1, which was previously approved in Order No. 693, was consistent with the Commission's prior determination that NERC should not establish multiple Reliability Standards for the same purpose.

21. The NOPR raised similar issues for Reliability Standard FAC–011–1. Specifically, the Commission was concerned with the potential exercise of undue discrimination given the possibility for differing results with the use of single and multiple contingency analyses for SOLs in the operating horizon under FAC–011–1 and short-term ATC calculations, and second whether consistency was better reflected through coordinated and consistent criteria for the calculation of operating horizon SOLs and short-term ATC. We will address these issues in the context of FAC–010–1 and FAC–011 together, given the common issue to both Reliability Standards. Most commenters address the concerns together as well.

Comments on Undue Discrimination

22. NERC, as well as the majority of industry representatives, takes the position that there is no potential for undue discrimination with the addition of the FAC SOL methodologies,[21] in particular if consistency is provided for among the FAC, planning and operations methodologies.[22] The NERC comments state that its draft ATC Reliability Standard requirements provide for consistency with the FAC–010–1 and FAC–011–1 assumptions and conditions. The NERC comments describe this coordination:

> Draft reliability standard MOD–028–1—Area Interchange Methodology requires the transmission operator to document that its model uses the same facility ratings as provided by the transmission owner. It also requires that the assumptions and contingencies used in determining TTC be consistent with those used for the same time horizon in operations and planning studies.
>
> Draft MOD–029–1—Rated System Path Methodology requires the transmission operator to document that its model uses the same facility ratings as provided by the transmission owner. It also requires that the assumptions and contingencies used in determining TTC be consistent with those used for the same time horizon in operations and planning studies.
>
> Draft MOD–030–1—Flowgate Methodology requires the transmission operator to document that its model uses the same facility ratings as provided by the transmission owner. It also requires that the assumptions and contingencies used in determining flowgates to match the contingencies and assumptions used in operations studies and planning studies for the applicable time periods. The links between the FAC standards and the MOD standards outlined above support the Commission's directives in Order 890 regarding the transparency requirements and mitigate potential for the exercise of undue discrimination.[23]

23. According to NERC, this ensures that the contingencies and assumptions used in the planning horizon under FAC–010–1 and the contingencies and assumptions used in the operating horizon under FAC–011–1 are consistent with the contingencies and assumptions used in calculating TTC and ATC for various time horizons.

24. Supplier and customer groups argue that there is a potential for undue discrimination if system operation and planning are not executed in a manner that is consistent with short- and long-term TTC assumptions.[24] Some commenters assert that there is no potential for discrimination in independently operated independent system operator (ISO) and regional transmission organization (RTO) systems.[25] The commenters largely agree that the potential for undue discrimination is mitigated insofar as the Order No. 890 transparency requirements promote open and consistent ATC calculations, because transparency allows any party to review and challenge the SOL criteria and methodology.[26]

25. NERC and others emphasize the consistency and coordination already required between the contingencies and assumptions used to determine SOLs for the planning horizon under the SOL methodology specified in FAC–010–1, on the one hand, and the contingencies and assumptions to develop TTCs which determine ATC. NERC states that FAC–010–1 requires planning authorities to have an explicit methodology to develop SOLs and must make this methodology available to all parties having a reliability-related need for the methodology or the limits so determined. This openness mitigates or prevents the exercise of undue discrimination.[27]

26. Furthermore, NERC states that the FAC Reliability Standards are coordinated with the development of pending MOD Reliability Standards, and this coordination supports transparency and mitigates the potential for the exercise of undue discrimination, consistent with Order No. 890. NERC notes that Order No. 693 did not approve Reliability Standard MOD–001–0 but directed specific improvements. Consequently, NERC is revising that Reliability Standard and preparing the three draft Reliability Standards described above. These draft Reliability Standards will set forth three currently used TTC and ATC calculation methodologies.[28] Although each of these three methodologies provides a different approach to the calculation of TTC, all require consistency between the contingencies and assumptions used in the determination of TTC and the contingencies and assumptions used in operating and planning studies for concurrent time periods.

27. EEI and APPA are concerned that the Commission may be duplicating

[21] *See, e.g.,* NERC and EEI and APPA Comments.

[22] *See, e.g.,* MidAmerican, NYSRC and NYISO, PG&E, Progress Energy, Southern and WECC Comments. EPSA argues that ATC assumptions cannot be more stringent than planning assumptions to ensure that capacity is adequate.

[23] NERC Comments at 18–20.

[24] *See* EPSA and NRECA Comments.

[25] *See* NYISO and Ontario IESO, ISO/RTO Council, and NYSRC and NYISO Comments.

[26] *See, e.g.,* Duke and EPSA Comments; *but see* NRECA Comments (arguing that differences between operating and planning assumptions make new users vulnerable to confusion).

[27] BPA, PG&E and WECC agree that disclosure mitigates the potential for undue discrimination. Ameren argues that the list provided for in FAC–014–1, Requirement R6 should be supplied to the relevant transmission provider and transmission operator, in addition to the Planning Authority.

[28] *See* NERC Comments at 9–10 for a description of the methodologies.

efforts underway pursuant to Order Nos. 890 and 693, which addressed competitive and reliability policy issues associated with the development and posting of ATC and TTC. EEI and APPA note that public utility transmission providers have recently posted for public review and comment the proposed Attachment Ks to their OATTs, proposing transmission planning and expansion methodologies, while a NERC Reliability Standards drafting team is developing a Reliability Standard covering the calculation of all elements of transfer capability, including ATC and TTC. According to EEI and APPA, the work of the NERC ATC Reliability Standard drafting team builds on the Reliability Standard proposed for Commission approval in this proceeding. EEI and APPA recommend that the Commission allow the industry to complete the intensive work required for implementation of Order Nos. 890 and 693 without the uncertainty that the Commission may seek to modify the scope and direction already established through material changes to the Reliability Standards proposed for approval in this proceeding.

28. The ISO/RTO Council comments that there may be the potential for undue discrimination, but not in grids operated by ISOs due to the lack of economic incentives. Furthermore, because ISOs and RTOs operate centralized dispatch markets, they do not rely on physical path reservations within their boundaries. Therefore, these commenters conclude that ATC calculation is not critical.[29]

29. Other commenters claim that coordination should not be so stringent to interfere with the different uses for the different transfer limit methodologies. MidAmerican maintains that the concurrent use of single and multiple contingencies is appropriate so long as appropriate coordination is made for long- and short-term analyses and ATC and operations planning. MidAmerican asserts that SOLs and TTC should remain distinct to allow the optimum reservation and use of the transmission system, while permitting appropriate responses to outages in the operations horizon. MidAmerican states that SOLs must change to incorporate current system operating information, addressing the ''next contingency'' to remain in a secure state, and that requiring SOLs to equal TTCs may result in less transmission capacity available for sale or increased reliance on transmission loading relief. The resulting lack of capacity may prevent transmission providers from meeting existing transmission contract obligations.

30. Santa Clara states that there is a need for consistency in the SOL methodology used by the reliability coordinator and the planning authority. Also, Santa Clara claims that conflicts could result for engineering design and/or operational criteria if a planning authority's SOL methodology calls for single contingency analysis, but a reliability coordinator or planning authority calculates long-term ATC using multiple contingencies. Therefore, Santa Clara concludes that FAC–010–1 and FAC–011–1 should be consistent in the SOL methodologies used by planning authorities and reliability coordinators.

31. Commenters disagree as to the impact of performing SOL determinations based on single contingencies while ATC is calculated using multiple contingencies. Several commenters argue that when SOLs are determined using single contingencies and ATC is calculated using multiple contingencies, the lack of consistency could permit discrimination in ATC calculation for transmission service.[30] EPSA argues that this potential must be addressed to fulfill the Order No. 890 requirement that transmission providers use short- and long-term ATC data and modeling assumptions that are consistent with operations and system expansion assumptions. Also, EPSA states that under Order No. 890 the Commission must ensure that planning and service capacity calculations are consistent and non-discriminatory. EPSA argues that FAC Reliability Standards that affect transmission planning cannot be divorced from the calculation of ATC and that use of different assumptions for planning and ATC could lead to inadequate capacity.

32. Ameren states that Reliability Standards should not impose inconsistent obligations on system users, but notes some calculations that appear similar may be different due to different applications. For instance, SOL system limit calculations may differ from planning calculations due to their application to different timeframes. Ameren argues that FAC–010 should be consistent with the transmission planning Reliability Standard TPL–002–0 for the long-term planning horizon, but acknowledges that FAC–010 may not be consistent with TPL–002–0 for the near-term planning horizon, to accommodate overload or low voltage mitigation efforts. Ameren requests that, to prevent the imposition of conflicting obligations, the Commission not accept the Reliability Standards and direct NERC to monitor the interrelated Reliability Standards for consistency.

33. NRECA maintains that different methodologies may discriminate in particular against new entrants who are unfamiliar with the differences. NRECA states that there are some circumstances in which a transmission provider may be able to benefit because it will have preferential access to transmission expansion information, especially where the planning authority and reliability coordinator reside in the same corporate family.

34. Several commenters request that the Commission delay approval and direct the ERO to evaluate the issues.[31] Progress Energy asserts that, to ensure consistency, the planning authority and reliability coordinator should use the same number of contingencies and the same categories of facility ratings to determine these values for its transmission system. EPSA argues that ATC assumptions cannot be more stringent than planning assumptions and that SOL contingencies must ''be in balance'' with ATC contingencies.

Comments on Consistency for SOLs, Transfer Capability and TTC

35. The second concern set out in the NOPR concerned whether the existence of different approaches to transfer limit calculations under FAC–010–1 and FAC–011, on the one hand, and FAC–012–1, on the other, was consistent with the Commission's prior determination that calculations of TTC transfer limits calculated under the FAC Reliability Standards were essentially the same as transfer limits calculated for Modeling purposes under the MOD Reliability Standard, MOD–001–1. Foreseeing a similar connection between facility transfer limit calculations under FAC–010–1 and ATC transfer limit calculations, the NOPR requested comment whether the FAC Reliability Standards should reflect any such consistency.

36. NERC states that the TPL Reliability Standards set the foundation for the types of contingencies to be considered for the Requirements in the FAC Reliability Standards. The FAC Reliability Standards are intended to be consistent with the set of contingencies

[29] NYSRC, NYISO and Ontario IESO take similar positions. The Commission notes that the cited analyses would not apply for transactions that cross ISO and RTO boundaries.

[30] *See, e.g.*, EPSA and NYISO and NYSRC Comments. NRECA agrees that there is a potential for undue discrimination when there are differences in the treatment of single and multiple contingencies in the near and long term.

[31] *See, e.g.*, NYSRC and NYISO, and NRECA Comments.

identified in the TPL Reliability Standards. The FAC Reliability Standards define facility ratings and system operating limits that are used as the basis for limits that are used in the determination of the ATC values within MOD Reliability Standards. As the TPL series of Reliability Standards are modified, conforming changes to the FAC and/or MOD series of Reliability Standards are expected to be necessary to ensure consistency in the list of contingencies.

37. In response to the Commission's statement that SOLs will change as additional contingencies are considered, EEI and APPA provide a description of how IROLs and SOLs are determined. When IROL and SOL values are determined, they are based on a worst-contingency criterion as defined by applicable planning or operating criteria for a given set of Bulk-Power System conditions. Therefore, according to EEI and APPA, unless the underlying set of system conditions change, it would be extremely unusual for IROL and SOL values to change.[32]

38. EEI and APPA state that SOLs are calculated and used to represent thermal, voltage, and stability limits for planning and operation of the Bulk-Power System with distinct calculation methods for SOLs under the three types of limits. For instance, a thermal-limit SOL is determined through a contingency analysis that models a facility as out of service while ensuring that the resulting flow is below the thermal ratings for each remaining facility. A voltage or stability limit SOL is determined by monitoring the flows on a facility or group of facilities to ensure voltage or stability criteria are not exceeded. These types of SOLs are commonly defined by planning authorities in their periodic studies, based on the pertinent Reliability Standards and other planning or operations criteria.

39. Other commenters generally agree that SOLs and TTCs are not the same.[33] Several commenters describe SOLs as one of many inputs used to develop TTC and, consequently, ATC.[34] Commenters distinguish SOLs and TTC/ATC, noting that TTC and ATC are defined by path (i.e., between a receipt point and delivery point) whereas an SOL applies to the discrete facilities that comprise the interconnected generation and transmission system (such as conductors, breakers and transformers). Also, SOLs vary based on season because of changes in ambient temperature, anticipated weather, and other variations in operational conditions.[35] In contrast, TTC and ATC are recalculated dependent on other circumstances including system usage and contractual reservations. These and other differences prompt the commenters to state that the processes for determining SOLs and TTC/ATC are necessarily different.

40. Several commenters note that SOL, ATC and TTC perform different functions.[36] These commenters concur that while assumptions should generally be consistent, complete consistency is neither achievable nor desirable. Duke states that while both SOLs and TTC may be based on fixed dispatch and interchange, FAC–010–1, or varying dispatch and interchange, FAC–011–1, they should still be evaluated against the same N–1 contingencies in a coordinated and consistent manner.

41. Most commenters argue in favor of coordination of SOL and TTC assumptions and conditions but disagree on the degree to which such consistency requires additional explicit guidance in the Reliability Standards. NERC maintains that the proposed FAC Reliability Standards and the MOD Reliability Standards under development already require consistency between one another with respect to assumptions and contingencies and additional coordination is not needed to support the Commission's directives in Order No. 890. SoCal Edison concurs that actual coordination is not necessary, but suggests that the ATC-related Reliability Standards reference the FAC Reliability Standards to provide clarity.

42. Southern requests, in response to FAC–011–1, that the Commission clarify that a policy of consistency between short-term ATC calculations and operations planning, on the one hand, and long-term ATC calculations and system expansion planning on the other does not support a finding that data and modeling assumptions for short-term assessments should be consistent with assumptions for long-term assessments. While assumptions are generally consistent, complete consistency is neither achievable nor desirable.

43. EPSA states that the Commission must ensure that planning and service capacity are calculated on a consistent, non-discriminatory basis, and argues that planning based on single contingencies combined with multiple contingency ATC calculations could lead to an inefficient transmission system, where service reservations cannot be met in real time.

44. NYSRC and NYISO argue that multiple contingency analyses in the operating horizon under FAC–011–1, such as that employed by WECC, should be applied in all of North America. NYSRC and NYISO note that their Regional Entity, Northeast Power Coordinating Council (NPCC), has included a multiple element requirement in its operating criteria for 40 years without problems. They conclude that multiple element contingencies are not uncommon and the system's ability to survive such incidents should be supported by appropriate operating Reliability Standards, not left to chance.

45. NYSRC and NYISO states that the FAC–011–1 drafting team maintains that lower operating limits due to multiple element requirements would restrict competition. However, NYSRC and NYISO argue that this suggests that the mere possibility that a Reliability Standard may restrict competitive transactions is not a sufficient reason for not adopting the Reliability Standard, even if it would be effective in maintaining system reliability. They contend that permitting competitive concerns to outweigh reliability would be inconsistent with the Commission's responsibility to ensure reliability.

Commission Determination

46. The Commission will not direct NERC to revise the FAC Reliability Standards to address Order No. 890 consistency issues. Given that the SOLs developed pursuant to the FAC Reliability Standards will be inputs to the calculation of TTC and ATC under the MOD Reliability Standards currently under development, the Commission agrees with commenters that SOLs are not the same as TTC used for ATC calculation. However, we note that SOLs are a significant component in TTC calculation.

47. Further, the Commission is persuaded by NERC's comments that it will coordinate the assumptions and conditions considered in system

[32] *Cf.* MidAmerican Comments at 7 (stating that SOLs change to account for actual or planned outages); and Southern Comments at 4–5 (noting that historically, power flow analyses were used to develop SOLs in the absence of real-time data, but that it is now possible to perform real-time contingency analysis and identify SOLs based on actual system conditions and facility loads).

[33] *See, e.g.*, NERC, Progress Energy, WECC, Southern, Duke, PG&E and SoCal Edison Comments.

[34] *See, e.g.*, NERC, Progress Energy, Duke, PG&E and SoCal Edison Comments.

[35] *See, e.g.*, NERC and Progress Energy Comments; *see also* WECC Comments. Although comments vary as to whether SOLs are permanently set or may be updated based on new information, this apparent disagreement appears to stem from use of different terms. Thus, while individual facility ratings are unlikely to change, the particular facility that is establishing the system limits in the N–1 contingency analysis will vary as conditions change and adjustments are made.

[36] *See* ISO/RTO Council and Southern Comments.

planning under the TPL Reliability Standards, SOL determination under the FAC Reliability Standards and TTC calculation under the MOD Reliability Standards.

48. At this time, the Commission disagrees with the commenters that argue that there is a potential for undue discrimination in the FAC Reliability Standards. The Commission raised the question regarding the application of the SOL methodology in the FAC Reliability Standards compared with the calculation of ATC. However, NERC has not at this time filed the Reliability Standards concerning TTC and ATC calculation. The Commission notes that it has previously provided directives concerning the need for coordination and consistency among short- and long-term ATC calculations, operations planning and system expansion determinations. The Commission agrees with commenters that the directives concerning consistency in Order Nos. 693 and 890 should alleviate concerns about the potential for undue discrimination. These directives are currently being addressed by NERC in Reliability Standards under development. We will not change those directives in this proceeding. When NERC files revised MOD Reliability Standards for calculating ATC or TTC, the Commission will review the resulting Reliability Standards for compliance with our directives in Order Nos. 890 and 693 concerning consistency for SOLs, transfer capability and TTC.[37]

49. Because the TPL series of Reliability Standards sets the foundation for the types of contingencies to be considered to meet requirements in the FAC Reliability Standards, and the FAC Reliability Standards are intended to be consistent with the set of contingencies identified in the TPL Reliability Standards, the Commission would be concerned if the TPL Reliability Standards use one set of contingencies to plan the system, while the FAC Reliability Standards generate another set to calculate SOLs in the planning horizon. As NERC acknowledges, as the TPL series of Reliability Standards is modified, conforming changes to the corresponding lists of contingencies in the FAC or MOD series of Reliability Standards are expected to be necessary to ensure consistency in the list of contingencies. Similarly, the Commission believes that as FAC or MOD Reliability Standards are updated, the TPL series of Reliability Standards must be updated to remain consistent. Therefore, we direct that any revised TPL Reliability Standards must reflect consistency in the lists of contingencies between the two Reliability Standards.[38] Should NERC file such revised TPL Reliability Standards, the Commission will review the resulting Reliability Standards for compliance with our directives in Order Nos. 890 and 693 concerning consistency for SOLs, transfer capability and TTC.

2. Loss of Consequential Load

50. The NOPR requested that NERC, as the ERO, clarify the discussion of network customer interruption in FAC–010–1, Requirement R2.3. Requirement R2.3 provides that the system's response to a single contingency may include, *inter alia,* ''planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.'' [39] The NOPR asked whether this provision is limited to the loss of load that is a direct result of the contingency, i.e., consequential load, or whether this provision allows firm load shedding and firm transmission curtailment following a single contingency.[40]

Comments

51. NERC clarifies that the provision in FAC–010–1, Requirement R2.3 is limited to loss of load that is a direct result of the contingency, i.e., consequential load loss. Several commenters concur with that interpretation.[41] NYSRC and NYISO state that in NPCC, firm-load shedding is only allowed following a recognized contingency if reliability cannot be assured for a subsequent contingency through normal control actions (citing dispatch and use of direct current sources).

52. Ameren states that for the long term planning horizon, no load is dropped except for load served directly by an out-of-service facility. However, in the operational or near term planning horizon, operating guidelines may call for dropping load to mitigate overload or low-voltage conditions until the necessary system reinforcements or restorations are completed. Therefore, Ameren thinks a distinction is appropriate.

Commission Determination

53. In response to the NYSRC and NYISO comments, the Commission reiterates its holding that addressed similar language on loss of load in Order No. 693, regarding Reliability Standard TPL–002–0. In Order No. 693, the Commission noted that ''allowing for the 30 minute system adjustment period, the system must be capable of withstanding an N–1 contingency, with load shedding available to system operators as a measure of last resort to prevent cascading failures.'' [42] Order No. 693 stated that the transmission system should not be planned to permit load shedding for a single contingency.[43] Order No. 693 directed NERC to clarify the planning Reliability Standard TPL–002–0 accordingly. The Commission reaches the same conclusion here. We will approve Reliability Standard FAC–010–1, Requirement R2.3 and the ERO should ensure that the clarification developed in response to Order No. 693 is made to the FAC Reliability Standards as well. Ameren's comments concerning the operational timeframe do not affect FAC–010–1, which concerns the planning time frame.

3. Loss of Shunt Device

54. The NOPR requested comment on Requirement R2.2 of FAC–010–1 and the corresponding Requirement R2.2 of FAC–011–1, which include the loss of a shunt device among the various single contingencies that a planning authority must address.[44] The NOPR noted that although the TPL Reliability Standards implicitly require the loss of a shunt device to be addressed, they do not do so explicitly. Therefore, the NOPR requested comment whether NERC should revise the TPL Reliability Standards to be consistent with FAC–010–1 and FAC–011–1 by explicitly requiring the consideration of a shunt device.

Comments

55. NERC explains that although the TPL Reliability Standards sets the

[37] Our determination here not to revise prior directives also addresses Southern's request, in response to FAC–011–1, that the Commission clarify its policy of consistency between operations planning and system expansion planning relative to TTC calculations.

[38] Similar consistency issues may arise with the transmission operating and planning (TOP) Reliability Standards because those Reliability Standards implement the SOLs and IROLs determined in the FAC Reliability Standards.

[39] Identical language appears in FAC–011–1, Requirement R2.3. Our analysis applies to that provision as well.

[40] Order No. 693 defined consequential load, at P 1794 n.461: ''Consequential load is the load that is directly served by the elements that are removed from service as a result of the contingency.''

[41] *See, e.g.*, NYSRC, NYISO, Ontario IESO, SoCal Edison and Southern Comments.

[42] Order No. 693 at P 1788.

[43] *Id.* P 1792 & n.460 and 1794 (stating ''on the record before us, we believe that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency'').

[44] NOPR at P 23, 33.

foundation for the types of contingencies to be considered for the FAC Reliability Standards. While the FAC Reliability Standards were developed after TPL–001–0, TPL–002–0, TPL–003–0 and TPL–004–0 were approved by the NERC board, NERC and Southern report that the FAC Reliability Standards drafting team recognized that TPL Table 1 needed clarity. Accordingly, NERC states that the drafting team modified the language from Table 1 in an effort to add clarity. According to NERC, the intent of the FAC Reliability Standard drafting team was to use the TPL contingencies as the definitional basis for SOL determination. Moreover, NERC states that the contingencies used in the FAC Reliability Standards are consistent with the contingencies identified in the TPL Reliability Standards, with the exception of the shunt device noted.

56. NERC notes that the TPL Reliability Standards are currently under revision. As the TPL Reliability Standards are modified, NERC states that conforming changes may need to be made to the FAC Reliability Standards to maintain consistency between the TPL Reliability Standards and the FAC Reliability Standards. At this time, NERC does not recommend modifying the TPL Reliability Standards to include a specific reference to shunt devices based on these FAC Reliability Standards and states that such a Commission directive is not necessary.

57. Commenters disagree whether the TPL Reliability Standards should be updated to address the loss of a shunt devise. Ameren and ISO/RTO Council state that the TPL requirements should be clarified to address shunt devices, while NRECA does not believe that a loss of a shunt device should be specifically named as a single contingency in the TPL Reliability Standards. Furthermore, NRECA believes that such a determination is within the ERO's technical expertise, is entitled to due weight and should therefore be pursued by the ERO, rather than the Commission.

Commission Determination

58. As discussed, the FAC Reliability Standards explicitly reference shunt devices as one of the contingencies to be examined in setting SOLs, whereas the TPL Reliability Standards do not explicitly reference shunt devises. NERC reports that this difference is a result of administrative lag in the preparation of the lists of single contingencies to be accounted for in analyses under the two sets of Reliability Standards. Based on NERC's statement that it is currently addressing disparate treatment of shunt devices by revising the appropriate TPL Reliability Standards through the Reliability Standards development process, we will accept Requirement R2.2 of FAC–010–1 and Requirement R2.2 of FAC–011–1. Given the current efforts to promote consistency among planning, operations and TTC calculations and assumptions, the Commission expects NERC to address any inconsistencies in the treatment of shunt devices in revised TPL Reliability Standards. In the event that an alternative approach is developed and proposed by the ERO, NERC is required to provide an adequate justification for any differing treatment among the particular facilities considered in the various Reliability Standards.

4. Load Forecast Error Under FAC–011–1

59. As described in the NOPR, Requirement R2.3.2 of FAC–011–1 provides that the system's response to a single contingency may include, *inter alia,* ''[i]nterruption of other network customers, only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or, if the real-time operating conditions are more adverse than anticipated in the corresponding studies, *e.g.*, load greater than studied.'' [45] In the NOPR, the Commission requested that NERC clarify the meaning of the phrase ''if the real-time operating conditions are more adverse than anticipated in the corresponding studies, *e.g.*, load greater than studied.'' In particular, the Commission questioned whether this provision treats load forecast error as a contingency and would allow an interruption due to an inaccurate weather forecast.

Comments

60. NERC states that deviations between anticipated conditions and real-time conditions, such as load forecast errors, are not contingencies by definition in the NERC glossary. However, in real-time, the operators must take the actions necessary to maintain bulk electric system reliability given current conditions. Available actions include load shedding if operating conditions warrant.

61. NERC states that when the real-time operating conditions do not match the assumed studied conditions, the deviation can reach a magnitude such that the operator must take actions different from those anticipated by the study. From that perspective, the study error has the same affect on the bulk electric system as many actual contingencies. While these deviations do not meet the approved definition of a ''contingency'' in NERC's glossary, NERC states that system operators need to react to these unexpected circumstances expeditiously and interruption of other network customers is allowed and expected if conditions warrant such an action. NERC maintains that this provision is necessary to ensure that system operators have the ability to shed load without penalty to preserve the integrity of the bulk electric system. Thus, while it does not classify and study forecast error as a ''contingency,'' NERC asserts that a significant gap between actual and studied conditions (such as a large error in load forecast) can be treated as though it were a contingency under the proposed Reliability Standard.

62. NERC states that all anticipatory studies must begin with a reasonable set of assumptions.[46] According to NERC, when ''real time'' approaches that time period that was assessed by the particular anticipatory study, real time conditions may not replicate the predicted state. For example, unscheduled transmission outages may have occurred, generation outages may have occurred, the system could be operating with one or more Transmission Loading Relief procedures or other congestion management action such as redispatch in effect requiring a different generation dispatch than anticipated when the applicable study was being conducted. Moreover, the actual load level and load diversity could be different than forecasted and used in the corresponding study, or the transmission facility loading levels could be significantly higher than studied because any of or all of the conditions above—either on the system being studied or on near-by systems.

63. NERC asserts that FAC–011–1, Requirement R2.3.2 allows interruption of network customers following a contingency and in anticipation of the next potential unscheduled event if the real-time operating conditions are more adverse than anticipated. The adjustment in response to an unscheduled outage or load forecast error, for example, would be to return to a reliable state, recognizing the

[45] NOPR at P 25.

[46] *See* NERC Comments at 26. NERC states that these assumptions would include: (1) *Existing* and scheduled transmission outages for that time period, (2) existing and scheduled generation outages for that time period, (3) projected generation dispatch for that time period, (4) predicted status of voltage control devices, and (5) load level and load diversity for the future time period being scheduled.

conditions as they exist at the time—available generation, transmission configuration, available reactive resources, load level and load diversity, and conditions on other systems.

64. Similarly, FirstEnergy argues that no change should be made, because FAC–011–1 is intended to permit a system operator to implement the best reliability response, but does not require an inquiry into the cause of system conditions.

65. ISO/RTO Council views ''load greater than studied'' as providing an example of when ''real-time operating conditions are more adverse than studied,'' not as a qualifier of that language. ISO/RTO Council does not support treating load forecast error as a contingency. While load forecast error may be unpredicted, normally time is available for adjustments. Commenters note that operating reserve requirements should provide sufficient margin for error, as reflected in the NERC glossary.[47]

66. Southern and NRECA comment that load forecast error is not a contingency, but is a failure in one element of the data that make up the day-ahead study base case. The day-ahead study is used to identify contingencies where reliability criteria may not be met (that is, SOLs are exceeded). Southern argues that the purpose of this process is to lessen the potential for problems occurring in real time. The day-ahead study is used to schedule resources and outages, and adjustments are made in real time as actual conditions differ from forecasted conditions. To respond to changing conditions, a system operator may rely on switching procedures, redispatch, curtailments and load shedding, but load shedding should be avoided.

67. NRECA argues that, because the matter is technical, it should be addressed by the ERO, through the Reliability Standards development process and not through a Commission rulemaking. Ameren notes that other load shedding conditions exist and suggests that the list of examples be expanded or that the specific reference to load forecast errors be removed to avoid confusion. Duke maintains that the phrase, ''or if real-time operating conditions are more adverse than anticipated in the corresponding studies, *e.g.*, load greater than studied,'' should be deleted because the focus of Requirement R2.3.2 is that a response to a second contingency may include interruption of non-consequential load, while extreme weather, while a possibility, is unrelated to SOL methodology or contingencies.

Commission Determination

68. The Commission agrees with Southern, NRECA and ISO/RTO Council that load forecast error is not a contingency and should not be treated as such for the purposes of complying with mandatory Reliability Standards. NERC has failed to support its assertion that a significant gap between actual and studied conditions (such as a large error in load forecast) can be treated as though it were a contingency under the proposed Reliability Standard. While such a situation may cause unanticipated contingencies to become critical, correcting for load forecast error is not accomplished by treating the error as a contingency, but is addressed under other Reliability Standards. For instance, transmission operators are required to modify their plans whenever they receive information or forecasts that are different from what they used in their present plans. Furthermore, variations in weather forecasts that result in load forecast errors are more properly addressed through operating reserve requirements.[48] Once the operating reserve is activated, BAL–002–0 requires correction through system adjustments to alleviate reliance on operating reserves within 90 minutes rather than treating the incorrect forecast as a contingency.[49] NERC's interpretation could be used to justify not taking timely emergency action prior to load shedding, or to influence how other Reliability Standards are interpreted, which could result in moving to ''lowest common denominator'' Reliability Standards.

69. The Commission does not find that NERC's interpretation is required by the text of FAC–011–1, Requirement R2.3.2. When read in connection with Requirement R2.3, it is clear that the operating conditions ''more adverse than anticipated,'' referred to in sub-Requirement R2.3.2 are exacerbating circumstances that are distinct from the actual contingency to be addressed that is referred to in Requirement R2.3. It is the existence of the exacerbating circumstance in combination with a separate and distinct contingency that triggers the potential for an interruption of network customers in R2.3.2. However, that reading does not support treating ''load greater than studied'' as a contingency.

70. The Commission disagrees with NERC's reading of sub-Requirement R2.3.2 and interpretation of the phrase ''load greater than studied.'' However, the Commission finds that the meaning of Requirement R.2.3 and sub-Requirement R.2.3.2 is not otherwise unclear. Therefore, keeping with our approach in this Final Rule, we approve FAC–011–1, but direct NERC to revise the Reliability Standard through the Reliability Standards development process to address our concern. This could, for example, be accomplished by deleting the phrase, ''e.g., load greater than studied'' from sub-Requirement R.2.3.2.

71. Ameren requests that the Commission consider a new issue not raised in the NOPR. Ameren should raise its concern with NERC in the Reliability Standards development process.

5. Other Issues

72. Midwest ISO requests that the Commission reject FAC–010–1 because calculations for the 5 to 10 year planning horizon do not provide useful guidance on potential expansions to planners or system operators. Midwest ISO supports the use of SOLs and IROLs in the operating horizon to properly secure the system but notes that, in the long-term planning horizon, SOLs and IROLs are used to identify system vulnerabilities, which may then be addressed in short-term operating studies. Midwest ISO states that operational data may be fed into models to ensure that no limits are reached and that the system can operate safely given the projected uses, outages and resources. However, Midwest ISO argues that developing SOLs and IROLs in the long-term planning horizon would not be useful, since there is no reason to believe that interface transfer limits, so calculated, would ever be reached or utilized in real time operations.

73. Midwest ISO supports a requirement for appropriate operational studies and cites an example examining the feasibility of a 1,000 MW projected interchange based on expected loads, resources and firm transactions. However, Midwest ISO does not see value in additional studies to determine the ultimate MW transfer limits in a similar interchange, because the system

[47] *See, e.g.*, ISO/RTO Council and NRECA Comments.

[48] *See, e.g.*, NERC, Request for Approval of Reliability Standards, Glossary of Terms Used in Reliability Standards, at 12 (April 4, 2006) (April 2006 Reliability Standards Filing) (defining Operating Reserve as ''That capability above firm system demand required to provide for regulation, *load forecast errors*, equipment forced and scheduled outages and local area protection. It consists of spinning and non-spinning reserves'' (emphasis added)).

[49] *See* Reliability Standard BAL–002–0, sub-Requirements R4.2 and R6.2. *See also* EOP–002–1 (requiring Energy Emergency Alert 1 to be declared if a balancing authority, reserve sharing group or load serving entity is concerned about sustaining its required Operating Reserves).

operator could not justify use of the facilities to achieve limits that are well beyond current system needs. Midwest ISO asserts that other planning processes, such as new generation deliverability studies or transmission feasibility studies are the appropriate means to accommodate requests for higher transfer limits.

74. NYSRC and NYISO maintain that Requirement R2.4 of FAC–011–1 should require consideration of credible multiple element Category C contingency events for determining SOLs for the operating horizon, similar to Requirement R2.4 in FAC–010–1.[50] According to NYSRC and NYISO, failure to consider this class of contingencies in determining SOLs during the operating horizon will compromise the reliability of the Bulk-Power System and weaken system reliability. NYSRC and NYISO maintain that FAC–011–1 does not require a reliability coordinator to operate the real time system within SOLs determined from credible multiple contingency scenarios.[51]

75. NYSRC and NYISO assert that they raised this issue with the Reliability Standards drafting team and that NYSRC and NYISO disagree with the drafting team about the result of considering credible multiple element contingency events for determining SOLs for the operating horizon. Further, they argue that FAC–011–1 is not consistent with the Blackout Report recommendation that NERC should not dilute the content of its existing Reliability Standards because FAC–011–1 is less stringent than prior practices in the Northeast and other regions. Other commenters request the Commission to reject the FAC Reliability Standards to permit NERC to address outstanding issues reflected in their pleadings.[52]

Commission Determination

76. The Commission finds that the Midwest ISO and NYSRC and NYISO have failed to raise any objection to the FAC Reliability Standards that would justify withholding our approval. Specifically, we note that Midwest ISO operates location-based marginal pricing markets using economic dispatch. Consequently, despite the fact that it may not rely on path-based transmission planning based on facility or path ratings, the FAC Reliability Standards would not prevent Midwest ISO from performing appropriate planning for its system. To the extent that it seeks an accommodation for its planning processes it may seek a regional difference or other accommodation through the Reliability Standards development process. As identified by NERC in its comments, the SOLs developed pursuant to FAC–010–1 will be an input to calculating long-term ATC as required by Order Nos. 890 and 693.[53]

77. SOLs are also used by transmission providers to provide details to system users concerning available capacity for transmission service and to communicate justifications for denials of service requests, including long-term ATC. Transmission owners are required to make long-term TTC calculations in accordance with Order Nos. 890 and 693.

78. To the extent that Midwest ISO requests that the Commission consider new issues not raised in the NOPR, the Commission's general practice is to direct that such comments be addressed in the NERC Reliability Standards development process. In Order No. 693, the Commission noted that various commenters provided specific suggestions to improve or otherwise modify a Reliability Standard to address issues that were not raised in the Commission's NOPR addressing that Reliability Standard. In those cases, the Commission directed the ERO to consider such comments when it modifies the Reliability Standards according to NERC's three-year review cycle. The Commission, however, does not direct any outcome other than that the comments receive consideration.[54] We direct a similar treatment to address the issue raised in the Midwest ISO's comments.

79. The Commission does not agree with NYSRC and NYISO's suggestion that FAC–011–1 must be revised so that SOLs for the operating horizon are determined based on both single and multiple contingencies. The FAC–011–1 methodology already requires the reliability coordinator to determine SOLs by considering both the multiple contingencies provided by the planning authority that could result in instability of the Bulk-Power System and the facility outages and minimum set of single contingencies that were previously considered. Requirements R3.3 and R4 direct each reliability coordinator to determine which stability limits arising from multiple contingencies it will apply and convey that information to other reliability coordinators, planning authorities and transmission operators. The list of multiple contingencies is supplied by the planning authority and is applicable for use in the operating horizon given the actual or expected system conditions. This is consistent with the Commission's directives in Order No. 693.[55] If NYSRC and NYISO are concerned that the multiple contingency list is not adequate, they should raise those concerns in the Reliability Standards development process.

6. Effective Date

80. In the NOPR, the Commission proposed to approve FAC–010–1, FAC–011–1 and FAC–014–1 as mandatory and enforceable Reliability Standards, consistent with NERC's original implementation plan beginning July 1, 2007 for Reliability Standard FAC–010–1; October 1, 2007 for FAC–011–1 and January 1, 2008 for FAC–014–1.

Comments

81. In its September 2007 comments, NERC requested that the Commission adopt updated effective dates of July 1, 2008 for FAC–010–1, October 1, 2008 for FAC–011–1 and January 1, 2009 for FAC–014–1. NERC explains that the proposed phased implementation schedule will provide each responsible entity sufficient time to determine stability limits associated with multiple contingencies, to update the system operating limits to comply with the new requirements, to communicate the limits to others, and to prepare the documentation necessary to demonstrate compliance.

82. No commenter objected to NERC's proposal to use staggered effective dates to implement the three Reliability Standards. However, Ontario IESO notes that FAC–010–1 and FAC–011–1 became effective in Ontario, Canada on October 1, 2007, making implementation of the Reliability Standards in Ontario and the United States inconsistent so long as the Commission delays approval or remands the Reliability Standards.

Commission Determination

83. The Commission agrees that it is appropriate in this instance to adopt

[50] Requirement R2.4 of FAC–010–1 states "with all facilities in service and following multiple Contingencies identified in TPL–003 the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating with their Facility Ratings and within their thermal, voltage and stability limit; and Cascading Outages or uncontrolled separation shall not occur."

[51] *See* NYSRC and NYISO Comments at 4–5.

[52] *See, e.g.*, NRECA Comments, Ameren Comments at 6 (arguing that the Commission should not accept Reliability Standards imposing conflicting obligations and should direct NERC to monitor interrelated Reliability Standards for consistency).

[53] NERC Comments at 7.

[54] *See* Order No. 693 at P 188; Order No. 693–A at P 118.

[55] *See id.* P 1601–03.

NERC's revised effective dates of July 1, 2008 for FAC–010–1, October 1, 2008 for FAC–011–1 and January 1, 2009 for FAC–014–1. Given that this Final Rule will not be effective until January 2008, it is reasonable to allow responsible entities in the United States adequate time to comply with these Reliability Standards.

84. As for Ontario IESO's concerns with the different implementation dates in Ontario and the United States, we agree that effective dates should be coordinated if practicable. In these circumstances, however, we foresee no problems arising from the effective dates approved here.

C. Western Interconnection Regional Difference

85. FAC–010–1 and FAC–011–1 each identify a list of contingencies to be studied in developing SOLs.[56] Each of these Reliability Standards includes a regional difference for the Western Interconnection containing a different list of multiple contingencies from those to be considered in other regions (which are derived from Table 1 in the TPL Reliability Standards series). The NOPR observed that the detailed list of considerations and contingencies in the regional differences for the Western Interconnection appears to be more stringent and detailed than the set of contingencies provided for in FAC–010–1 and FAC–011–1. The regional differences require WECC to evaluate multiple facility contingencies when developing SOLs under FAC–010–1 and FAC–011–1. The Commission proposed to approve the WECC regional difference for establishing SOLs.[57]

86. However, the Commission expressed its concern that the regional difference provides that the Western Interconnection may make changes to the contingencies required to be studied or required responses to contingencies but does not specify the procedure for doing so. The regional difference states:

> The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to the Contingencies for specific facilities based on actual system performance and robust design.[58]

87. The regional differences do not identify any process for making such changes or indicate whether the requirements for reasonable notice and opportunity for public comment, due process, openness and balance of interests will be met.[59] Accordingly, the NOPR proposed that WECC identify its process to revise the list of contingencies and requested comment whether the regional difference should state the process.

Comments

88. WECC explains that it has a process to evaluate probabilities for single contingencies and adjust performance requirements for facilities, known as the ''Seven Step Process for Performance Category Upgrade Request'' (Seven Step Process).[60] WECC states that the Seven Step Process is a ''stand-alone'' process that is used for evaluating the probability of an event on a single facility and for adjusting performance requirements of that facility. According to WECC, the Seven Step Process applies to individual facilities and not entire ''outage categories.''

89. WECC states that the Seven Step Process was adopted after full due process at the WECC Planning Coordination Committee level and when it was approved by the WECC board of directors. WECC describes its process through which it will review an applicant's ''request [for] a change to a path's performance Category level.''[61] The performance category level is an outage performance standard assigned to each path under the WECC planning standards.[62] The Seven Step Process is largely a technical description of the proposed change, which includes a single page workflow diagram describing the approval procedures.[63]

90. NERC describes the WECC process as a stand-alone process used for evaluating the probability of an event on a single facility and for adjusting performance requirements of that facility, that is not used to determine which categories of events are to be considered when rating facilities or for adjusting performance requirements of entire categories.

91. WECC states, while it does not object to including appropriate language in the regional difference describing generally the criteria modification process, it prefers not to have the regional differences specifically modified to include the Seven Step Process. WECC expresses concern that, if included in the Reliability Standards, changes to the Seven Step Process would then be made through the NERC ballot body process rather than the WECC Reliability Standards Development process.

92. Santa Clara comments that the contingency revision process should be open and states the WECC regional difference should explicitly state the process.

Commission Determination

93. In the NOPR, we noted that Order No. 672 explains that ''uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception.''[64] As a general matter, the Commission has stated that regional differences are permissible if they are either more stringent than the continent-wide Reliability Standard or if they are necessitated by a physical difference in the Bulk-Power System.[65] Regional differences must still be just, reasonable, not unduly discriminatory or preferential and in the public interest.[66]

94. No party has objected to the operative provisions of the WECC regional difference. Furthermore, the regional difference contains terms that are more stringent than the requirements established for the rest of the continent. Therefore, consistent with Order No. 672, the Commission approves the WECC regional differences for FAC–010–1 and FAC–011–1, incorporating separate lists of contingencies to be considered in the Western Interconnection.

95. WECC's explanation of its Seven Step Process adequately addresses the Commission's concerns stated in the NOPR. The Commission was concerned that the language of the WECC regional difference would, in effect, allow WECC to revise the content of a mandatory and enforceable Reliability Standard without the approval of the ERO or the Commission. WECC makes clear that that is not the case. WECC explains that the intent of the regional difference is not to allow WECC to change or adjust entire category performance requirements. Rather, the intent is to evaluate the probability of an event on a single facility and adjust performance requirements of that facility. WECC states that this evaluation could result in performance requirements for the outage of a specific facility ''more or less stringent based on the probability of that outage on that facility.''[67]

96. Further, the Seven Step Process, developed after a fair and open vetting at the Regional Entity, appears to

[56] *See* FAC–010–1, Requirement 2.2 and FAC–011–1, Requirement 2.2.

[57] NOPR at P 18–19 (citing Order No. 672 at P 290–91).

[58] *See, e.g.*, FAC–011–1, section E.1.4 (incorporating the WECC regional difference).

[59] NOPR at P 20 (*citing* FPA section 215(c)(2)(D), 16 U.S.C. 824o(c)(2)(D) (2000 & Supp. V 2005)).

[60] WECC Comments at 4 and Attachment A.

[61] Seven Step Process at 1.

[62] *Id.*

[63] *Id.*, Attachment B.

[64] Order No. 672 at P 290.

[65] *Id.* P 291.

[66] *Id.*

[67] WECC at 4.

provide adequate due process for the entity responsible for the performance of the facility that is the subject of a particular ''adjustment.'' Presumably, this process would also provide sufficient documentation of the change so that, for example, an auditor would have the ability to identify the change and evaluate an entity's performance with the regional standard taking the change into consideration. The Commission finds that it is not necessary to modify the regional differences to expressly mention the Seven Step Process. Accordingly, the Commission approves the WECC regional difference for the reasons discussed above. Our approval is made with the understanding any WECC-approved change would not result in less stringent criteria for Western Interconnection facilities than those defined in the main body of FAC–010–1 and FAC–011–1.

D. New Glossary Terms

97. NERC proposes to add or revise four terms in the NERC glossary, Cascading Outages, Delayed Fault Clearing, Interconnection Reliability Operating Limit (IROL) and Interconnection Reliability Operating Limit T_v (IROL T_v). The Commission stated in the NOPR that there could be multiple interpretations of some of these terms.[68] Therefore, the Commission proposed to clarify the terms Cascading Outages, IROL, and IROL T_v, as discussed below. With the exception of the proposed definition of Cascading Outages, which we remand, the Commission approves the proposed definitions, as discussed below.

1. Cascading Outages

98. Although the glossary does not currently include a definition of Cascading Outage, it includes the following approved definition of Cascading:

Cascading: The uncontrolled successive loss of system elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.[69]

NERC proposes the following new definition of Cascading Outages:

Cascading Outages: The uncontrolled successive loss of Bulk Electric System facilities triggered by an incident (or condition) at any location resulting in the interruption of electric service that cannot be restrained from spreading beyond a pre-determined area.

99. The NOPR stated that the extent of an outage that would be considered a cascade is ambiguous in the current term Cascading. The Commission noted that the new definition of Cascading Outages includes a similar phrase ''a pre-determined area,'' which may lead to different interpretations of the extent of an outage that would be considered a Cascading Outage. In the NOPR, the Commission stated that it understands that this phrase could be interpreted to refer to a scope as small as the elements that would be removed from service by local protective relays to as large as the entire balancing authority. The Commission objected to the possibility that the Cascading Outages definition might consider the loss of an entire balancing authority as a non-cascading event. The NOPR sought comment on the Commission's proposal to accept the glossary definition but clarify the scope of an acceptable ''pre-determined area.'' Such an area would not extend beyond ''the loss of facilities in the bulk electric systems that are beyond those that would be removed from service by primary or backup protective relaying associated with the initiating event.''

Comments

100. NERC, EEI and APPA, Ameren, Duke, PG&E, Southern and Xcel disagree with the Commission's interpretation of the term Cascading Outages. While FirstEnergy, Southern and MidAmerican agree that NERC's proposed definition of Cascading Outages may be open to interpretation, they also object to the Commission's interpretation of the term. Several commenters, including Duke, NRECA and Ameren, assert that the Commission's proposal is overly prescriptive.

101. According to NERC, as well as EEI and APPA, the term was designed to provide a classification for an event, not to identify attributes of an event such as scope, risk or acceptable impact. As EEI and APPA understand the term, Cascading Outages will be used to describe facts and circumstances in the analysis of widespread uncontrolled outages that take place when there are unexpected equipment failures or strong electrical disturbances. The analyses of these highly unusual and large-scale events, however, will take place through processes described in the NERC Rules of Procedure. EEI and APPA maintain that the key to NERC's proposed definition of Cascading Outages is ''uncontrolled'' and that the scope of the outage is unknown.

102. NERC agrees with the Commission's concern that the definition of Cascading Outages was not intended to allow for the loss of an entire balancing authority unless such an area conforms to the area predetermined by studies. However, commenters maintain that there are additional safety nets that are intended to confine an outage to a pre-set area of the bulk electric system, including special protection systems, protective relays, remedial action schemes, and underfrequency and undervoltage load shedding applications. According to commenters, the Commission's proposed interpretation appears to ignore the role of transmission operators in managing and containing outage situations and the use of these systems.[70]

103. ISO/RTO Council notes that system planning studies examining the extent of outages anticipate the operation of protective relay options providing primary protection, with backup protective relays provided by ''secondary protection, zone 2 protection and special protection systems.'' ISO/RTO Council requests a clarification as to what backup protective relaying means and whether or not planned operation of a special protection system to contain impacts of outages is regarded as backup protection.

104. Several commenters maintain that the Commission's proposed interpretation of the term Cascading Outages is too broad. NERC, Ameren, PG&E, Southern, and EEI and APPA assert that this interpretation would result in too many outages being defined as Cascading Outages under the Commission's interpretation. They maintain that even an outage that is contained exactly as planned could be designated as a Cascading Outage. Further, NERC states that the implication of applying the Commission's definition to the TPL evaluations required in Table 1 would be extraordinary in scope and impact and the cost would be prohibitive. Additionally, NERC and Southern state that the Commission's interpretation is in conflict with Table 1 in the TPL–001–0 through TPL–004–0 Reliability Standards that the Commission approved in Order No. 693.

105. NERC, therefore, recommends that the Commission reconsider its proposal to accept and interpret the term Cascading Outages. According to NERC, adoption of the Commission's proposed understanding would require a review of all NERC Reliability Standards that rely on the Cascading Outages definition to be certain that the

[68] NOPR at P 38–43.

[69] April 2006 Reliability Standards Filing, Glossary at 2.

[70] *See, e.g.*, NERC, EEI and APPA, and Duke Comments.

intent of the Reliability Standards does not also change. If the definition of Cascading Outages needs to be changed, several commenters, including NERC, FirstEnergy and Southern, maintain that changes should be made through NERC's stakeholder process. Some commenters offer alternative definitions or clarifications for Cascading Outages.[71]

106. Ameren disagrees that the proposed phrase ''beyond a pre-determined area'' would invite system users to expand or contract their understanding of such an area without limit. Ameren argues that the concern that the pre-defined area be defined as too small is unfounded because the existing definition already requires that the outage not be local in nature, that is, result in outages beyond the site of the initial failure. Furthermore, the definition cannot be defined too large, since the scope for operation and planning authorities is already established.

107. Similarly, PG&E and Southern argue that the Commission's proposal is not necessary, because the Reliability Standards address outages in relation to the severity of their impact on the grid. PG&E maintains that the Reliability Standards limit application of the definition to an entire balancing authority, because the Reliability Standards require a technical analysis of the appropriate boundary, and distribution of the methodology used to define a ''predetermined area.'' Therefore, according to PG&E, such a ''predetermined area'' could only be defined to mean the loss of an entire balancing authority when technically appropriate.

108. MidAmerican requests that the Commission direct NERC to re-focus planning Reliability Standards away from the ambiguous definition of cascade and develop a definition based on maximum loss of load allowed for a given contingency, such as 1,000 MW. MidAmerican supports its 1,000 MW threshold as being a significant loss, while not exceeding the load for most balancing authorities.

109. Southern argues that as written, the phrase ''that adversely impact the reliability of the bulk electric system'' modifies Cascading Outages and not a violated system operating limit. Southern proposes that the phrase should be left in because it codifies an appropriate distinction between Cascading Outages that affect reliability and other localized events that create a controlled separation that do not impact the reliability of the system.

110. Xcel is concerned that the Commission's comments indicate an intent to restrict the use of controlled outages to prevent the escalation of system contingencies. Xcel states that the Commission's proposed definition represents a departure from historical interpretation and application of the term and could have significant unintended consequences.

Commission Determination

111. The Commission will not adopt the proposed interpretation of Cascading Outages contained in the NOPR. Rather, for the reasons discussed below, we remand the term Cascading Outages. If it chooses, NERC may refile a revised definition that addresses our concerns.

112. The present definition of Cascading provides that ''[c]ascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area *predetermined by studies*.'' In contrast, the proposed definition of Cascading Outages describes an interruption ''that cannot be restrained from spreading beyond a *pre-determined area*.'' Although the language is somewhat similar, it removes the qualifying language ''by studies.'' NERC provides no explanation for this change. The Commission is concerned that the removal of this phrase in the definition of Cascading Outage would allow an entity to identify a ''predetermined area'' based on considerations other than engineering criteria. For example, under the proposed definition of Cascading Outages, an entity could predetermine that an outage could spread to the edge of its footprint without considering the event to be a Cascading Outage. The Commission is concerned that the limits placed on outages should be determined by sound engineering practices.

113. Adding to the ambiguity, NERC has provided definitions of Cascading and Cascading Outages that seem to describe the same concept—uncontrolled successive loss of elements or facilities—but did not explain any distinction between the two terms. Nor did NERC explain why the new term is necessary and requires a separate definition. Because NERC did not describe either the need for two definitions that seem to address the same matter or the variations between the two, the Commission remands NERC's proposed definition of Cascading Outages.

114. If NERC decides to propose a new definition of Cascading Outages, the Commission would expect any proposed definition to be defined in terms of an area determined by engineering studies, consistent with the definition of Cascading. In addition, the Commission is concerned with the consistent, objective development of criteria with which the ''pre-determined area'' would be determined. Therefore, the Commission suggests that NERC develop criteria, to be found in a new Reliability Standard or guidance document, that would be used to define the extent of an outage, beyond which would be considered a Cascading Outage.

115. Further, the terms Cascading and Cascading Outages contain other nuanced differences. For example, the ''loss of system elements'' is changed to ''loss of Bulk Electric System facilities'' and ''triggered by an incident'' is changed to ''triggered by an incident (or condition).'' The implications of these changes are not clear to the Commission. Accordingly, if NERC submits a revised definition of Cascading Outage, it should explain the purpose and meaning of changes from the term Cascading.

116. Given the concerns raised by commenters that the extent of an outage may vary, the Commission will not grant at this time MidAmerican's request to direct NERC to re-focus planning Reliability Standards away from the definition of cascade. Further, MidAmerican requests that the Commission consider new issues not raised in the NOPR. MidAmerican should raise these issues in the NERC Reliability Standards development process.

117. In response to ISO/RTO Council's request, the Commission clarifies that by ''backup protective relaying,'' the NOPR intended the compliance guidance to be consistent with Table 1 of the TPL Reliability Standards. Table 1 identifies the categories, contingencies, and system limits or impacts for normal and emergency conditions on the bulk electric system. A common requirement for each of the category A, B and C contingencies found in Table 1 is that after all of the system, demand and transfer impacts have been accommodated for specific contingencies, there will not be cascading outages of the bulk electric system. Since all of the planned and controlled aspects have been accommodated in this table, anything beyond these planned and controlled aspects should be a cascading outage.

[71] *See* Duke, ISO/RTO Council and MidAmerican Comments.

2. IROL

118. The approved definition of IROL in the NERC glossary is:

The value (such as MW, MVar, Amperes, Frequency or Volts) derived from, or a subset of the System Operating Limits, which if exceeded, could expose a widespread area of the Bulk Electric System to instability, uncontrolled separation(s) or cascading outages.[72]

NERC proposes to modify the definition to state:

Interconnection Reliability Operating Limit (IROL): A system operating limit that, if violated, could lead to instability, uncontrolled separation, or Cascading Outages that adversely impact the reliability of the bulk electric system.

119. The NOPR proposed to accept the revised definition of IROL with the understanding that all IROLs impact bulk electric system reliability.[73] The Commission stated that it was concerned that the revised IROL definition could be interpreted so that violations of some IROLs that do not adversely impact reliability are acceptable, due to exceptions based on the phrase ''that adversely impacts the reliability of the bulk electric system.'' The NOPR indicated that the revised definition is otherwise consistent with the intent of the statute.

Comments

120. NERC, EEI and APPA, WECC and ISO/RTO Council agree with the Commission's interpretation of the definition of IROL. NERC states that an appropriate reading of the IROL definition does require that it impact reliability; otherwise it is not an IROL. The IROL definition does not suggest that there is a subclass of IROLs that do not impact reliability. Ameren supports the clarification and suggests that the phrase ''that will adversely affect the reliability of the Bulk-Power System'' should be deleted so that all IROLs are treated the same.

121. Although EEI and APPA agree with the Commission, they respectfully suggest that the Commission in the future defer initially to NERC on matters of technical interpretation.

122. SoCal Edison suggests that the IROL definition be revised to add the words ''across an interconnection'' after the initial phrase ''[a] system operating limit'' to clarify that an IROL relates to an SOL across a transmission operator's ''area, interconnection or region.''

Commission Determination

123. As proposed in the NOPR, the Commission accepts NERC's definition of IROL. In response to EEI and APPA, the Commission believes that, where a potential ambiguity exists, it is appropriate to clarify what the Commission believes it is approving. In Order No. 693, the Commission approved the proposed Reliability Standards with certain clarifications.[74] The Commission does not intend to unilaterally modify definitions; however, the Commission must ensure that it correctly understands NERC's intent while giving ''due weight'' to the technical expertise of the ERO.[75] Promoting such clarity is an important aspect of approving both Reliability Standards and glossary terms.

124. With regard to SoCal Edison's concerns, these are new matters not raised in the NOPR that should be addressed in the NERC Reliability Standards development process.

3. IROL T_v

125. The NOPR proposed to accept the proposed IROL T_v definition.[76] However, the Commission noted that Order No. 693 identified two interpretations of when an entity exceeds an IROL.[77] The Commission stated that the definition of IROL T_v does not distinguish between those two interpretations. Therefore, the Commission proposed to accept the definition of IROL T_v with the understanding that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation.

Comments

126. NERC agrees that the definition of IROL T_v does not distinguish between the two possible interpretations of when an entity exceeds an IROL contained in Order No. 693. NERC, Ameren, and Southern agree with the Commission that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation. WECC reports that this is consistent with WECC's interpretation.

127. The ISO/RTO Council disagrees that the only time an IROL can be exceeded is for a contingency. According to ISO/RTO Council, IROL T_v should be less than or equal to 30 minutes with the understanding that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation. ISO/RTO Council would, however, propose to expand this understanding to include the situation where no contingencies have occurred but the IROL is exceeded due to system condition changes, such as unanticipated external interchange schedules, redispatch, morning and evening load pick-up, or other events that cause a rapid change in transmission loading.

Commission Determination

128. The Commission approves NERC's proposed definition of IROL T_v based on the Commission's understanding explained in the NOPR and affirmed by NERC. ISO/RTO Council essentially seeks to expand the definition of IROL T_v to apply to additional circumstances. This matter is best addressed by ISO/RTO Council in the NERC Reliability Standards development process.

E. Violation Risk Factors

129. Violation Risk Factors delineate the relative risk to the Bulk-Power System associated with the violation of each Requirement and are used by NERC and the Regional Entities to determine financial penalties for violating a Reliability Standard. NERC assigns a lower, medium or high Violation Risk Factor for each mandatory Reliability Standard

[72] April 2006 Reliability Standards Filing, Glossary at 7.

[73] NOPR at P 42.

[74] Order No. 693 at P 278 (''The Commission finds that these Reliability Standards, *with the interpretations provided by the Commission* in the standard-by-standard discussion, meet the statutory criteria for approval as written and should be approved''), P 1606 (''Commenters did not take issue with the proposed interpretation of the term 'deliverability' * * * The Commission adopts this proposed interpretation'').

[75] *Id.* P 8 (citing section 215(d)(2) of the FPA and 18 CFR 39.5(c)(1), (3) and stating ''the Commission will give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard or to a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection. However, the Commission will not defer to the ERO or to such a Regional Entity with respect to the effect of a proposed Reliability Standard or proposed modification to a Reliability Standard on competition.''). *See also* Order No. 672 at P 40.

[76] NOPR at P 43. *Interconnection Reliability Operating Limit T_v* (*IROL T_v*): The maximum time that an Interconnection Reliability Operating Limit can be violated before the risk to the interconnection or other Reliability Coordinator Area(s) becomes greater than acceptable. Each Interconnection Reliability Operating Limit's T_v shall be less than or equal to 30 minutes.

[77] *See* Order No. 693 at P 946 & n.303. Order No. 693 explained that IRO–005–1 could be interpreted as allowing a system operator to respect IROLs in two possible ways: (1) *Allowing* IROL to be exceeded during normal operations, *i.e.*, prior to a contingency, provided that corrective actions are taken within 30 minutes, or (2) exceeding IROL only after a contingency and subsequently returning the system to a secure condition as soon as possible, but no longer than 30 minutes.

Requirement.[78] The Commission also established guidelines for evaluating the validity of each Violation Risk Factor assignment.[79]

130. In separate filings, NERC identified Violation Risk Factors for each Requirement of proposed Reliability Standards FAC–010–1, FAC–011–1 and FAC–014–1.[80] NERC's filings requested that the Commission approve the Violation Risk Factors when it takes action on the associated Reliability Standards.

131. The NOPR proposed to approve most of the Violation Risk Factors for Reliability Standards FAC–010–1, FAC–011–1 and FAC–014–1. However, as discussed below, several of the Violation Risk Factors submitted for Reliability Standards FAC–010–1, FAC–011–1 and FAC–014–1 raise concerns.

1. General Issues

Comments

132. Commenters generally oppose the Commission's proposal for raising the Violation Risk Factors. Further, they generally ask that changes to the Violation Risk Factors be made through the Reliability Standards development process.

133. Progress Energy maintains that violations associated with planning Reliability Standards cannot be high risk because such violations do not pose an imminent danger to the Bulk-Power System. Progress Energy contends that planning Reliability Standards are implemented over a long-term planning horizon. Progress Energy states that entities continually update load and other forecasts and assumptions relied on to determine future transmission and distribution system needs. As these assumptions change, so do the transmission plans. Progress Energy states that utilities provide constant oversight, frequent reviews, audits and evaluations of the planning process over the entire multi-year planning horizon. According to Progress Energy, with this type of control and oversight, it is highly unlikely that an inaccurate forecast or misassumption early in the planning horizon could result in an operational reliability concern. Consequently, planning authorities and reliability coordinators have adequate time to analyze, determine and correct planning violations before they could have an operational impact.

134. Progress Energy also states that unnecessarily increasing Violation Risk Factors for planning Reliability Standards may have unintended consequences. According to Progress Energy, assigning overly conservative Violation Risk Factors will cause planning and reliability coordinators to focus more time and resources on satisfying those Reliability Standards, potentially to the detriment of other Reliability Standards. It maintains that the level of the Violation Risk Factor is intended to communicate the importance of the Reliability Standards and, consequently, the resources that should be devoted to its implementation and the magnitude of the penalty associated with its violation. Further, to avoid potentially costly penalties associated with violation of higher risk factors, Progress Energy maintains that planning and reliability coordinators may take a more conservative approach with their assumptions, which could quite literally result in lower TTC and ATC determinations than would otherwise be available.

Commission Determination

135. NERC submitted 72 Violation Risk Factors corresponding to the Requirements and sub-requirements in the three FAC Reliability Standards. The Commission, giving due weight to the technical expertise of NERC as the ERO, concludes that the vast majority of NERC's designations accurately assess the reliability risk associated with the corresponding Requirements and are consistent with the guidelines set forth in the Commission's prior orders addressing Violation Risk Factors. Therefore, the Commission approves 63 of these Violation Risk Factor designations. However, the Commission concludes that nine filed Violation Risk Factors for FAC Reliability Standards Requirements are not consistent with these guidelines and also concludes that one Requirement where no Violation Risk Factor was filed should have been assigned a Violation Risk Factor consistent with an identically worded Requirement from another FAC Reliability Standard. Thus, the Commission directs NERC to modify these ten Violation Risk Factors.[81]

136. NERC and other commenters, such as APPA and EEI, ask the Commission to defer to NERC on the determination of Violation Risk Factors and, instead, allow NERC to reconsider the designations using the Reliability Standards development process. The Commission has previously determined that Violation Risk Factors are not a part of the Reliability Standards.[82] In developing its Violation Risk Factor filing, NERC has had an opportunity to fully vet the FAC Violation Risk Factors through the Reliability Standards development process. The Commission believes that, for those Violation Risk Factors that do not comport with the Commission's previously-articulated guidelines for analyzing Violation Risk Factor designations, there is little benefit in once again allowing the Reliability Standards development process to reconsider a designation based on the Commission's concerns. Therefore, we will not allow NERC to reconsider the Violation Risk Factor designations in this instance but, rather, direct below that NERC make specific modifications to its designations. NERC must submit a compliance filing with the revised Violation Risk Factors no later than 90 days before the effective date of the relevant Reliability Standard.

137. That being said, NERC may choose the procedural vehicle to change the ten Violation Risk Factors consistent with the Commission's directives. NERC may use the Reliability Standards development process, so long as it meets Commission-imposed deadlines.[83] In this instance, the Commission sees no vital reason to direct NERC to use section 1403 of its Rules of Procedure to revise the Violation Risk Factors below, so long as the revised Violation Risk Factors address the Commission's concerns and are filed no less than 90 days before the effective date of the relevant Reliability Standard. The

[78] The specific definitions of high, medium and lower are provided in *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 9 (*Violation Risk Factor Order), order on reh'g*, 120 FERC ¶ 61,145 (2007) (*Violation Risk Factor Rehearing*).

[79] The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) Consistency within a Reliability Standard; (3) Consistency among Reliability Standards; (4) Consistency with NERC's Definition of the Violation Risk Factor Level; and (5) Treatment of Requirements that Co-mingle More Than One Obligation. The Commission also explained that this list was not necessarily all-inclusive and that it retained the flexibility to consider additional guidelines in the future. A detailed explanation is provided in *Violation Risk Factor Rehearing,* 120 FERC ¶ 61,145, at P 8–13.

[80] *See* NERC, Request for Approval of Violation Risk Factors for Version 1 Reliability Standards, Docket No. RR07–10–000, Exh. A (March 23, 2007), as supplemented May 4, 2007. To date, the Commission has addressed only those Violation Risk Factors pertaining to the 83 Reliability Standards approved in Order No. 693. *Violation Risk Factor Order,* 119 FERC ¶ 61,145.

[81] The ten Violation Risk Factors to which the Commission directs modification include Requirement R3.4 for FAC–011–1, where NERC did not assign a Violation Risk Factor. In this instance, the Commission assigns a Violation Risk Factor to the subject Requirement that is consistent with the Violation Risk Factor assigned to an identical Requirement for another Reliability Standard, FAC–010–1, Requirement R2.3.

[82] *Violation Risk Factor Rehearing,* 120 FERC ¶ 61,145, at P 11–16, *citing North American Reliability Corp.,* 118 FERC ¶ 61,030, at P 91, *order on clarification and reh'g,* 119 FERC ¶ 61,046 (2007).

[83] *See North American Electric Reliability Corp.,* 118 FERC ¶ 61,030, at P 91, *order on compliance,* 119 FERC ¶ 61,046, at P 33 (2007).

Commission also notes that NERC should file Violation Severity Levels before the FAC Reliability Standards become effective.

138. In revising the Violation Risk Factors, NERC must address the Commission's concerns, as outlined below, and also follow the five guidelines for evaluating the validity of each Violation Risk Factor assignment. Consistent with the *Violation Risk Factor Order,* the Commission directs NERC to submit a complete Violation Risk Factor matrix encompassing each Commission-approved Reliability Standard and including the correct corresponding version number for each Requirement when it files revised Violation Risk Factors for the FAC Reliability Standards.

139. Progress Energy incorrectly claims that a planning Reliability Standard will never qualify for a high Violation Risk Factor. According to NERC, a high risk requirement includes:

> (b) * * * a requirement *in a planning time frame* that, if violated, could, under emergency, abnormal, or restorative conditions *anticipated by the preparations,* directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition [emphasis added].

140. A Violation Risk Factor assigned to Requirements of planning-related Reliability Standards represent, in a planning time frame, the potential reliability risk, under emergency, abnormal, or restorative conditions anticipated by the preparations to the Bulk-Power System. As such, how much time a planning authority or reliability coordinator has to identify and correct a violation of a planning-related Requirement is irrelevant in the assignment of an appropriate Violation Risk Factor.

141. The Commission also disagrees with Progress Energy that overly conservative Violation Risk Factor assignments may result in the lowering of TTC and ATC determinations because planning and reliability coordinators may take a more conservative approach with assumptions to avoid potentially costly penalties. Progress Energy did not assert any specific deficiency regarding the relationship between planning Reliability Standards and TTC and ATC determinations. Because Violation Risk Factors do not determine the actions a responsible entity must take, but merely measure the risk of violating a Requirement to the reliability of the Bulk-Power System, it is the specific Requirements in a given Reliability Standard that establish the relationship between planning Reliability Standards and TTC and ATC determinations, not the assignment of a Violation Risk Factor. If Progress Energy has specific concerns that a Reliability Standard is having an unduly detrimental effect on TTC or ATC determinations, it should raise such issues in the Reliability Standards development process.

Comments on WECC Violation Risk Factors

142. In the NOPR, the Commission noted that there are no Violation Risk Factors applicable to the WECC regional differences and that certain portions of the WECC regional differences lack levels of non-compliance. The NOPR requested comment on whether it should require WECC to develop Violation Risk Factors and the levels of non-compliance for the regional differences. The NOPR also requested comment on how WECC should assess penalties in the interim, if it were tasked with such a responsibility.

143. NERC states that WECC believes that it should be required to develop Violation Risk Factors for its regional differences. WECC indicates that it will initiate efforts to develop Violation Risk Factors for the regional differences identified in FAC–010–1 and FAC–011–1. In the interim, WECC proposes to assess penalties for non-compliance by adopting the same Violation Risk Factor for each WECC regional difference as is identified for NERC Requirements R2.4 and R2.5 for FAC–010–0 and Requirement R3.3 for FAC–011–1 that the WECC regional differences replace. It is WECC's intention to propose that the WECC regional differences should have the same Violation Risk Factors as NERC Requirements R2.4 and R2.5 in FAC–010–1 and Requirement R3.3 for FAC–011–1 when it goes through its process to develop the Violation Risk Factors.

144. WECC notes that levels of non-compliance already exist in section D.3 in both FAC–010–1 and FAC–011–1. For penalty calculations in the interim, before Violation Risk Factors and levels of non-compliance consistent with NERC's methodology are developed, WECC intends to apply the Violation Risk Factors established for NERC Requirements R2.4 and R2.5 for FAC–010–1 and Requirement R3.3 for FAC–011–1.

145. Santa Clara agrees that WECC should develop the Violation Risk Factors and levels of non-compliance for the WECC regional differences.

Commission Determination

146. Furthermore, the Commission agrees that it is appropriate to permit WECC to develop the Violation Risk Factors that are applicable to the WECC regional differences. The Commission also takes note of WECC's proposal to assign the same Violation Risk Factors to the WECC regional differences as are assigned to NERC Requirements R2.4 and R2.5 in FAC–010–1 and Requirement R3.3 for FAC–011–1. The Commission believes that WECC's approach is reasonable and approves of that proposal. Should the NERC process arrive at a different conclusion, WECC and NERC must justify any disparate treatment in their filing of WECC Violation Risk Factors. To accommodate the WECC process and, in light of the fact that the NERC Violation Risk Factors will also apply until WECC develops its own, we direct WECC to file Violation Risk Factors for the FAC–010–1 and FAC–011–1 no later than the effective date of the applicable Reliability Standard. The Commission will address issues related to the development of Violation Risk Factors for the WECC regional differences after they have been filed for approval. Similarly, WECC should file Violation Severity Levels at the same time it files Violation Risk Factors.

2. Requirements R2 and R2.1–R2.2.3 for FAC–010–1 and FAC–011–1

147. The NOPR proposed to direct NERC to modify the lower Violation Risk Factor assigned to FAC–010–1, Requirement R2 and the medium Violation Risk Factor assigned to sub-Requirements R2.1–R2.2.3 based on guideline 4, which assesses whether a Violation Risk Factor conforms to NERC's definition for the assigned risk level. The Commission proposed to require NERC to assign each of these requirements a high Violation Risk Factor.

148. FAC–010–1, Requirement R2 requires each planning authority's SOL methodology to include a requirement that SOLs provide for bulk electric system performance consistent with a stable pre-contingency (sub-Requirement R2.1) and post-contingency (sub-Requirements R2.2–R2.2.3) bulk electric system using an accurate system topology with all facilities operating within their ratings and without post-contingency cascading outages or uncontrolled separation.

149. Requirement R2.1 of FAC–010–1 requires each planning authority's SOL methodology to include a requirement that SOLs developed must provide for bulk electric system performance

consistent with transient, dynamic and voltage stability in a pre-contingency state and with all facilities in service. In the NOPR, the Commission stated that it believes that a lower Violation Risk Factor is inappropriate because Requirement R2.1 of FAC–010–1 is not administrative in nature. The Commission stated that it believes that a violation of Requirement R2.1 could directly cause or contribute to Bulk-Power System instability, separation or cascading failures, because a violation of Requirement R2.1 means that the system is in an unreliable state even before the system is subject to a contingency. Therefore, we proposed to require NERC to change the Violation Risk Factor for Requirement R.2.1 to high.

150. The Commission had similar concerns with respect to FAC–010–1, Requirement R2.2 because it specifically states that, with regard to post-contingency bulk electric system performance, ''[c]ascading outages or uncontrolled separation shall not occur.'' Therefore, the Commission reasoned that if Requirement R2.2 is violated for any one of the specific contingencies as described in Requirements R2.2.1–R2.2.3, cascading outages or uncontrolled separation of the Bulk-Power System may occur, which would merit a high Violation Risk Factor.[84]

151. The Commission had similar concerns with the Violation Risk Factor assignments of Requirement R2 and sub-Requirements R2.1–2.2.3 of FAC–011–1, which contain language similar to Requirements in FAC–010–1. Consequently, the NOPR proposed to modify the Violation Risk Factors for these Requirements and sub-Requirements to high.

Comments

152. NERC disagrees that it should assign high Violation Risk Factors for Requirements R2 and R2.1–R2.2.3 for FAC–010–1. NERC agrees that the lower Violation Risk Factor assignment for Requirement R2 of FAC–010–1 merits reconsideration but does not agree that the Violation Risk Factor assignment for Requirement R2 or the sub-Requirements should be changed from medium to high. NERC proposes to process this proposed change through the Commission-approved Reliability Standards development process.

153. NERC believes that FAC–010–1, Requirement R2 and its subparts should only have a single Violation Risk Factor and this should be medium. NERC maintains that Requirement R2 does not include any obligations to conduct analyses or assessments, but merely lists topics that must be included in the SOL methodology. NERC states that the requirements to follow the methodology in setting the SOLs are included in FAC–014–1. According to NERC, if FAC–010–1 Requirement R2 were violated, the Bulk-Power System would not experience instability, separation, or cascading failures in real-time. All of the uses of the SOLs developed with the methodology in FAC–010–1 are for planning purposes. While failure to comply with Requirement R2 and its sub-requirements over the long term may affect the ability to effectively monitor, control, or restore the Bulk-Power System, NERC states that a violation of theses requirements is unlikely to lead to Bulk-Power System instability, separation, or cascading failures.

154. Ameren argues that, because the FAC Reliability Standards at issue in this proceeding are administrative in nature and are not operational Reliability Standards, a high Violation Risk Factor is inappropriate. Because the Reliability Standards establish methodologies, a violation does not directly threaten reliability.

155. In response to the Commission's proposal in the NOPR, NERC agrees that FAC–011–1, Requirement R2 and its sub-requirements merit consideration for a high Violation Risk Factor assignment. NERC proposes to process this proposed change through its Reliability Standards development process. According to NERC, if the methodology for setting real-time limits is not correct, then the resultant real-time limits may be incorrect and operating to these incorrect limits could directly lead to Bulk-Power System instability, separation, or cascading failures.

156. For the reasons discussed in the general issues section, above, Progress Energy disagrees that the Violation Risk Factors should be modified. Ameren asserts that the Commission approved lower and medium Violation Risk Factors for Requirements in FAC–008–1 and FAC–009–1, which deal with setting and communicating the methodologies for facility ratings and are comparable to FAC–010–1 and FAC–011–1, in the Violation Risk Factor Order. To be consistent with other approved Violation Risk Factors, Ameren argues that the Commission should not order changes to the Violation Risk Factors for FAC–010–1 and FAC–011–1.

Commission Determination

157. NERC, Progress Energy and Ameren argue that the failure to have a methodology to develop SOLs that is only used in the planning horizon will not cause or contribute to Bulk-Power System instability, separation, or cascading failures in real-time. The Commission disagrees. The SOLs and remedial measures determined during transmission planning ensure Reliable Operation in real-time. As the Commission stated in Order No. 693, transmission planning is a process that involves a number of stages including developing a model of the Bulk-Power System, using this model to assess the performance of the system for a range of operating conditions and contingencies, determining those operating conditions and contingencies that have an undesirable reliability impact, identifying the nature of potential options and the need to develop and evaluate a range of solutions, and selecting the preferred solution, taking into account the time needed to place the solution in service.[85] Also, the Blackout Report cited FirstEnergy for violation of the then-effective NERC Planning Standard 1A, Category C.3—the equivalent of FAC–10–1, sub-Requirement R2.3.3.[86] The Blackout Report also found that had FirstEnergy conducted adequate planning studies on voltage stability (*e.g.*, FAC–010–1, Requirement R2.2), it would not have set its minimum acceptable voltage at 90 percent.[87]

158. Because the SOLs and remedial measures determined during transmission planning ensure Reliable Operation in real-time, the Commission believes that violations of planning requirements of the SOL methodology Reliability Standards present the same potential reliability risks as violations in the operating time horizon. Our determination is consistent with the NERC proposed, and Commission approved definition of a high Violation Risk Factor, which considers the violation of Requirements relevant to the planning time horizon.

159. With regard to FAC–010–1, Requirement R2, and FAC–011–1, Requirement R2, the Commission agrees with NERC that Requirement R2, without its sub-Requirements, includes no required performance or outcome. As such, no Violation Risk Factor needs to be assigned to Requirement R2 in either FAC–010–1 or FAC–011–1. Further, the Commission agrees with NERC that FAC–010–1, sub-Requirements R2.2.1–

[84] NOPR at P 53.

[85] *See* Order No. 693 at P 1683.

[86] Blackout Report at 41.

[87] *Id.* at 42.

R2.2.3 are topics to be included in an SOL methodology which do not require an assessment or analysis to be performed. As such, a medium Violation Risk Factor is appropriate.

160. However, with regard to FAC–010–1, sub-Requirements R2.1 and R2.2, the Commission disagrees with NERC that a medium Violation Risk Factor is appropriate. Sub-Requirements R2.1–R2.2 require that the planning authority's SOL methodology must include Requirements for SOLs to demonstrate transient, dynamic, and voltage stability performance pre- and post-contingency.

161. The Commission believes that violations of FAC–010–1, sub-Requirements R2.1 and R2.2 present similar, if not the same, risk to Bulk-Power System reliability as violations of TPL–001–0, Requirement R1 and TPL–002–0, Requirement R1. TPL–001–0, Requirement R1 establishes reliable pre-contingency Bulk-Power System performance. NERC proposed, and the Commission approved, a high Violation Risk Factor for TPL–001–0, Requirement R1. TPL–002–0, Requirement R1 establishes reliable post-contingency Bulk-Power System performance. The Commission directed, and NERC revised, the Violation Risk Factor assignment for TPL–002–0, Requirement R1 to high to be consistent with the pre-contingency performance Requirement of TPL–001–0, Requirement R1. The Commission believes both TPL Requirements establish similar, if not the same, Bulk-Power System performance metrics as FAC–010–1, Requirements R2.1 and R2.2.

162. Further, contrary to NERC's position, the Commission believes that to demonstrate the pre- and post-contingency performance metrics required by Requirements R2.1–R2.2 an assessment or analysis would need to be performed. As such, Requirements R2.1–R2.2 provide for actions that go beyond NERC's characterization of the subject of the requirements as limited to a list of topics that must be included in a methodology. Therefore, we conclude that these Requirements are more properly treated as implementation or operational requirements that may have a direct impact on reliability.

163. For the same reasons, the Commission does not agree with Ameren's argument that the Commission's proposal is inconsistent with prior Violation Risk Factor determinations made for what Ameren believes to be comparable Requirements of Reliability Standards FAC–008–1 and FAC–009–1.[88] As examples in support of its argument, Ameren points to the Commission approved medium Violation Risk Factors for FAC–008–1, Requirements R1.3.1–R1.3 and the lower Violation Risk Factors for the remaining Requirements, all of which establish topics that do not incorporate a performance metric to be included in a methodology. Ameren also points to the medium Violation Risk Factor assignments for Requirements of FAC–009–1 that establish facility ratings based on a methodology. As the Commission states previously in this order, FAC–010–1 and FAC–011–1 do not merely establish documentation, methodologies, and administrative tasks, as is the case for the Requirements that Ameren points to as examples of inconsistencies. The FAC–010–1 and FAC–011–1 Requirements at issue require the Bulk-Power System to demonstrate transient, dynamic, and voltage stability performance pre- and post-contingency. The Commission believes that, to demonstrate the pre- and post-contingency performance metrics required by these Requirements, an assessment or analysis would need to be performed. The Commission approved high Violation Risk Factors for similar Bulk-Power System performance metrics. As such, the Requirements at issue go beyond the establishment and documentation of a methodology as Ameren suggests and are fully consistent with the Violation Risk Factor assignments the Commission has previously approved.

164. The Commission agrees with NERC that the Requirements to follow a methodology when determining SOLs are included in FAC–014–1. However, as the Commission states above, FAC–010–1, Requirements R2.1–R2.2 establish the performance metrics of the SOL methodology used. Thus, if the planning authority's methodology to develop SOLs does not meet the demonstrated performance metrics of these Requirements in a planning time horizon, then under emergency, abnormal, or restorative conditions, the Bulk-Power System would be at risk of instability, separation, or cascading failures.

165. With regard to the determination of SOLs for the operations time horizon established by Reliability Standard FAC–011–1, Requirement 2 and its sub-Requirements, NERC comments, ''if the methodology for setting real-time limits is not correct, then the resultant real-time limits may be incorrect and operating to these incorrect limits could directly lead to bulk-power system instability, separation, or cascading failures.''[89] As such, NERC's statement supports the Commission's rationale that FAC–011–1, Requirements R2.1–R2.2.3 merit consideration of a high Violation Risk Factor. Consistent with the previous Commission determination in this order that time horizons are irrelevant in the determination of an appropriate Violation Risk Factor assignment, and to ensure consistency with the conclusions of the Blackout Report (guideline 1) and among similar Requirements of Reliability Standards (guideline 3), the Commission directs NERC to revise the Violation Risk Factor assigned to FAC–010–1, Requirements R2.1–R2.2 to high.

166. Similar to FAC–010–1, Requirements R2.2.1–R2.2.3, the Commission believes that FAC–011–1, Requirements R2.2.1–R2.2.3 describe topics to be included in an SOL methodology and do not require an assessment or analysis to be performed. Therefore, the Commission believes a medium Violation Risk Factor is appropriate for these Requirements. Consequently, the Violation Risk Factor assignments for FAC–011–1, Requirements R2.2.1–R2.2.3 do not need to be revised as the Commission proposed in the NOPR.

3. FAC–014–1, Requirement R5

167. In the NOPR, the Commission proposed to require NERC to assign a high Violation Risk Factor to FAC–014–1, Requirement R5 and sub-Requirements R5.1–5.1.4. The Commission was concerned that NERC's proposal was not consistent with the findings of the Blackout Report.

168. Requirement R5 requires that the reliability coordinator, planning authority and transmission planner each provide its SOLs and IROLs to those entities that have a reliability-related need for those limits and provide a written request that includes a schedule for delivery of those limits. Sub-Requirements R5.1–R5.1.4 comprise the list of supporting information to be provided.

169. The Blackout Report identified ineffective communications as one common factor of the August 2003 blackout and other previous major blackouts[90] and explained that, ''[u]nder normal conditions, parties with reliability responsibility need to communicate important and prioritized information to each other in a timely way, to help preserve the integrity of the grid.''[91] Because the Blackout Report, as

[88] Ameren Comments at 14–15.

[89] NERC Comments at 39.

[90] Blackout Report at 107.

[91] *Id.* at 109.

well as reports on other previous major blackouts, determined that the timely communication of important and prioritized information, in this case, SOLs and IROLs, to entities that have a reliability-related need for those limits are crucial in maintaining the reliability of the Bulk-Power System, the Commission stated that it believed assigning a medium Violation Risk Factor assignment to FAC–014–1, Requirement R5 and sub-Requirements R5.1–5.1.4 was not consistent with the findings of the Blackout Report. The Commission, therefore, proposed to require NERC to assign a high Violation Risk Factor to these Requirements.

Comments

170. NERC does not agree with the Commission's proposed modification to FAC–014–1, Requirement R5 and its subparts. NERC maintains that, while failure to act to prevent and/or mitigate an instance of exceeding an IROL is expected to result in adverse system consequences, FAC–014–1, Requirement R5 is not aimed at preventing and/or mitigating an IROL. Rather, according to NERC, FAC–014–1, Requirement R5 is aimed at communicating information to others. NERC agrees that effective communication is one factor that can contribute to Bulk-Power System instability, separation, or cascading failures, meriting a medium Violation Risk Factor.

171. However, NERC does not agree that the failure to communicate the actual or potential existence of SOLs and IROLs to those entities that are not required to resolve those limits will result in Bulk-Power System instability, separation, or cascading. NERC maintains that the impact of not notifying adjacent entities of an actual or potential IROL is a medium risk as it only impacts the ability of neighboring entities to effectively monitor the Bulk-Power System. Further, NERC notes that IRO–015–1, Requirement R1 requires that the reliability coordinator make notifications and exchange reliability-related information with other reliability coordinators. This requirement was approved by the Commission with the medium Violation Risk Factor assignment. This FAC–014–1, Requirement R5 is of a similar nature to IRO–015–1, Requirement R1 and should therefore maintain its medium Violation Risk Factor assignment.

172. For the same reasons discussed above, Progress Energy argues that the Commission should not modify the Violation Risk Factor to high. Ameren asserts that the Commission approved medium Violation Risk Factors for Requirements in FAC–013–1, which sets procedures for establishing and communicating transfer capabilities and is comparable to FAC–014–1, in the *Violation Risk Factor Order*. To be consistent with other approved Violation Risk Factors, Ameren argues that the Commission should not order changes to the Violation Risk Factors for FAC–014–1.

Commission Determination

173. The Commission agrees with NERC that FAC–014–1, Requirement R5 is not aimed at the prevention and/or mitigation of IROLs, but rather the communication of SOL and IROL information. However, NERC's argument is flawed in that Requirement R5 requires reliability coordinators, planning authorities and transmission planners to communicate and provide SOL and IROL information to entities that have a reliability-related need for those limits. NERC's comments, on the other hand, focus on provision of information to entities that are not required to resolve those limits. Therefore, a failure to notify adjacent entities of an actual or potential IROL creates a demonstrable risk because it impairs the ability of neighboring entities to effectively monitor the Bulk-Power System. In addition, the Commission believes that this Requirement applies to both real-time operations and the planning time frames, by ensuring that inter-dependent IROLs in adjacent footprints are duly considered in the planning time frame and timely remedial actions are taken in real-time operation.

174. In the *Violation Risk Factor Order*, the Commission applied guideline 1 to ensure critical areas identified as causes of that and other previous major blackouts are appropriately assigned Violation Risk Factors. Ineffective communication was identified as a factor common to the August 2003 blackout and other previous major blackouts.[92] Further, the Blackout Report stated that ''[i]neffective communications contributed to a lack of situational awareness and precluded effective actions to prevent the cascade.'' [93]

175. For the reasons stated above and lessons learned from previous blackouts, the Commission believes Violation Risk Factor for Requirement R5 and the sub-requirements in R5.1 should be assigned as high to reflect the potential reliability risk of not communicating IROLs to adjacent entities that have a reliability-related need for the information. Since SOLs are determined to maintain Bulk-Power System facilities within acceptable operating limits, the communication of those limits to those with a reliability related need, ensures the protection of Bulk-Power System facilities, thus preventing cascading failures of the interconnected grid, the Commission directs NERC to assign a high Violation Risk Factor to FAC–014–1, Requirement R5 and sub-Requirements R5.1.

176. The Commission also disagrees with NERC that the Commission's proposal to revise Violation Risk Factors for Requirement R5 and its sub-Requirements is inconsistent with previously approved Violation Risk Factor assignments. NERC's reference to the medium Violation Risk Factor assigned to IRO–015–1, Requirement R1 and Ameren's reference to the medium Violation Risk Factor assigned to FAC–013–1 Requirements are not inconsistencies. In both instances, the information that is to be provided is not specifically relevant to SOLs and IROLs, where the Commission has approved high Violation Risk Factors. For example, the high Violation Risk Factor the Commission proposed in the NOPR is consistent with previously approved Violation Risk Factor assignments for similar Requirements R4 and R5 of Reliability Standard IRO–004–1. Reliability Standard IRO–004–1, Requirements R4 and R5 establish the provision and sharing of system study information, respectively, relevant to the determination of SOLs and IROLs. NERC proposed, and the Commission approved a high Violation Risk Factor for IRO–004–1, Requirements R4 and R5. As such, to ensure consistency with the conclusions of the Blackout Report and among similar Requirements of other Reliability Standards, the Commission directs NERC to revise the Violation Risk Factors for FAC–014–1, Requirements R5 and R5.1 to high.

177. The Commission believes, however, that FAC–014–1, Requirements R5.1.1—R5.1.4 provide supporting information. Therefore, the Commission believes a medium Violation Risk Factor is appropriate for these Requirements and the Violation Risk Factor assignments for FAC–014–1, Requirements R5.1.1-R5.1.4 do not need to be revised as the Commission proposed in the NOPR.

4. FAC–010–1, Requirement 3.6

178. Reliability Standard FAC–010–1, Requirement 3.6 establishes the criteria for determining, in the planning time horizon, when violating an SOL qualifies as an IROL, and criteria for developing any associated IROL T_v.

[92] *Id.* at 109.

[93] *Id.* at 161.

NERC proposed to assign Requirement 3.6 a lower Violation Risk Factor. However, NERC proposed a medium Violation Risk Factor assignment to Reliability Standard FAC–011–1, Requirement R3.7 which establishes the same criteria in the operating time horizon. The Commission believes that the criteria for determining when violating an SOL qualifies as an IROL should be the same regardless of whether in the planning time horizon or the operating time horizon. This fact is supported by the Blackout Report finding that FirstEnergy did not have an adequate criterion to determine voltage stability in both the planning and operating time frames. That failure led to the company in adopting an inappropriate 90 percent minimum acceptable voltage factor.[94] Based on these facts, the Commission concludes that the potential reliability risk to the Bulk-Power system for a violation of those criteria in the planning horizon is the same as the potential reliability risk in the operating horizon. The Commission expects consistency between similar, and in this instance, identically-worded, Requirements of Reliability Standards. Therefore, the Commission directs NERC to ensure that the proposed Violation Risk Factor for FAC–010–1, Requirement R3.6 is changed from lower to medium.

5. FAC–011–1, Requirement 3.4

179. NERC did not propose a Violation Risk Factor assignment for Reliability Standard FAC–011–1, Requirement R3.4. Requirement R3.4 establishes a requirement that a Reliability Coordinator's SOL methodology include a description of the level of detail to be reflected in the system models that are used in the operating time frame. NERC assigned a lower Violation Risk Factor to FAC–010–1, Requirement 3.3 which establishes the same requirement for Planning Authorities' SOL methodologies in the planning time frame. Consistent with the definition of a lower Violation Risk Factor, the Commission believes that a violation of FAC–011–1, Requirement 3.4 would not be expected to affect the electrical state or capability or the Bulk-Power System or the ability to effectively monitor and control the Bulk-Power System. As such, and to ensure consistency among similar Requirements of Reliability Standards, the Commission believes a lower Violation Risk Factor assignment is appropriate for FAC–011–1, Requirement R3.4.

IV. Information Collection Statement

180. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[95] The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–725D ''Facilities Design, Connections and Maintenance Reliability Standards.'' Under section 3507(d) of the Paperwork Reduction Act of 1995,[96] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426 [Attention: Michael Miller, Office of the Chief Information Officer], *phone:* (202) 502–8415, *fax:* (202) 208–2425, *e-mail: Michael.Miller@ferc.gov.* Comments on the requirements of the proposed rule may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], *fax:* 202–395–7285, *e-mail: oira_submission@omb.eop.gov.*

181. The ''public protection'' provisions of the Paperwork Reduction Act of 1995 requires each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection number cannot be displayed. In the case of information collections published in regulations, the control number is to be published in the **Federal Register**.

182. The NOPR proposed to approve three new Reliability Standards developed by NERC as the ERO. The NOPR stated that the three proposed Reliability Standards do not require responsible entities to file information with the Commission. Nor, with the exception of a three year self-certification of compliance, do the Reliability Standards require responsible entities to file information with the ERO or Regional Entities. However, the Reliability Standards do require responsible entities to develop and maintain certain information for a specified period of time, subject to inspection by the ERO or Regional Entities.[97]

183. *Burden Estimate:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of April 2007. NERC and the Regional Entities have identified approximately 170 Investor-Owned Utilities, and 80 Large Municipals and Cooperatives. NERC's compliance registry indicates that there is a significant amount of overlap among the entities that perform these functions. In some instances, a single entity may be registered under all four of these functions. Thus, the Commission estimates that the total number of entities required to comply with the information ''reporting'' or development requirements of the proposed Reliability Standards is approximately 250 entities. About two-thirds of these entities are investor-owned utilities and one-third is a combination of municipal and cooperative organizations.

184. The Public Reporting burden for the requirements approved in the Final Rule is as follows:

Data collection FERC–725D	Number of respondents	Number of responses	Hours per respondent	Total annual hours
Investor-Owned Utilities	170	1	Reporting: 90 Recordkeeping: 210	Reporting: 15,300. Recordkeeping: 35,700.
Large Municipals and Cooperatives	80	1	Reporting: 90 Recordkeeping: 210	Reporting: 7,200. Recordkeeping: 16,800.
Total	250			75,000.

[94] Blackout Report at 42.

[95] 5 CFR 1320.11 (2007).

[96] 44 U.S.C. 3507(d).

[97] *See* NOPR at P 60–61 for a description of this information.

Total Hours: (Reporting 22,500 hours + Recordkeeping 52,500 hours) = 75,000 hours. (*FTE=Full Time Equivalent or 2,080 hours*).

Total Annual Hours for Collection: (Reporting + Recordkeeping = 75,000 hours.

Information Collection Costs: The Commission projects the average annualized cost to be the total annual hours (reporting) 22,500 times $120 = $2,700,000.

Recordkeeping = 52,500 @ $40/hour = $2,100,000.

Labor (file/record clerk @ $17 an hour + supervisory @ $23 an hour).

Storage 1,800 sq. ft. × $925 (off site storage) = $1,665,000.

Total costs = $6,465,000.

The Commission believes that this estimate may be conservative because most if not all of the applicable entities currently perform SOL calculations and the proposed Reliability Standards will provide a common methodology for those calculations.

Title: FERC–725D Facilities Design, Connections and Maintenance Reliability Standards.

Action: Proposed Collection of Information.

OMB Control No.: 1902–0247.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify. In addition, annual and three-year self-certification requirements will apply.

Necessity of the Information: The three Reliability Standards, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the three proposed Reliability Standards would ensure that system operating limits or SOLs used in the reliability planning and operation of the Bulk-Power System are determined based on an established methodology.

Internal review: The Commission has reviewed the requirements pertaining to mandatory Reliability Standards for the Bulk-Power System and determined the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

V. Environmental Analysis

185. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[98] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[99] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act Certification

186. The Regulatory Flexibility Act of 1980 (RFA)[100] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.*, planning authorities, reliability coordinators, transmission planners and transmission operators, to which the requirements of this Final Rule apply do not fall within the definition of small entities.[101]

187. As indicated above, based on available information regarding NERC's compliance registry, approximately 250 entities will be responsible for compliance with the three new Reliability Standards. It is estimated that one-third of the responsible entities, about 80 entities, would be municipal and cooperative organizations. The approved Reliability Standards would apply to planning authorities, transmission planners, transmission operators and reliability coordinators, which tend to be larger entities. Thus, the Commission believes that only a portion, approximately 30 to 40 of the municipal and cooperative organizations to which the approved Reliability Standards will apply, qualify as small entities.[102] The Commission does not consider this a substantial number. Moreover, as discussed above, the approved Reliability Standards will not be a burden on the industry since most if not all of the applicable entities currently perform SOL calculations and the approved Reliability Standards will simply provide a common methodology for those calculations. Accordingly, the Commission certifies that the approved Reliability Standards will not have a significant adverse impact on a substantial number of small entities.

188. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Document Availability

189. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

190. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

191. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the

[98] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[99] 18 CFR 380.4(a)(5) (2007).

[100] 5 U.S.C. 601–612.

[101] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act (SBA), which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

[102] According to the Department of Energy's (DOE) Energy Information Administration (EIA), there were 3,284 electric utility companies in the United States in 2005, and 3,029 of these electric utilities qualify as small entities under the SBA definition. Among these 3,284 electric utility companies are: (1) 883 cooperatives of which 852 are small entity cooperatives; (2) 1,862 municipal utilities, of which 1,842 are small entity municipal utilities; (3) 127 political subdivisions, of which 114 are small entity political subdivisions; and (4) 219 privately owned utilities, of which 104 could be considered small entity private utilities. *See* Energy Information Administration Database, Form EIA–861, DOE (2005), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html*.

Public Reference Room at *public.referenceroom@ferc.gov*.

VIII. Effective Date and Congressional Notification

192. These regulations are effective February 8, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Kimberly D. Bose,

Secretary.

Appendix A: Commission Directed Revisions to Violation Risk Factor Assignments

Standard number	Requirement number	Text of requirement	Violation risk factor		Guideline
			NERC proposal	Commission determination	
FAC–010–1	R2	The Planning Authority's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:	Lower	Explanatory Text	
FAC–010–1	R2.1	In the pre-contingency state, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect current or expected system conditions and shall reflect changes to system topology such as Facility outages	Medium	High	3 (Consistent with FAC–011–1 R2.1).
FAC–010–1	R2.2	Following the single Contingencies [1] identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading Outages or uncontrolled separation shall not occur	Medium	High	3 (Consistent with FAC–011–1 R2.2).
FAC–010–1	R3.6	Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL Tv	Lower	Medium	3 (Consistent with FAC–011–1 R3.7).
FAC–011–1	R2*	The Reliability Coordinator's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:	Medium	Explanatory Text	
FAC–011–1	R2.1*	In the pre-contingency state, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect current or expected system conditions and shall reflect changes to system topology such as Facility outages	Medium	High	
FAC–011–1	R2.2*	Following the single Contingencies [1] identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading Outages or uncontrolled separation shall not occur	Medium	High	
FAC–011–1	R3.4	Level of detail of system models used to determine SOLs	Not assigned	Lower	3 (Consistent with FAC–010–1 R3.3).
FAC–014–1	R5	The Reliability Coordinator, Planning Authority and Transmission Planner shall each provide its SOLs and IROLs to those entities that have a reliability-related need for those limits and provide a written request that includes a schedule for delivery of those limits as follows:	Medium	High	1, 3 (Consistent with IRO–004–1 R4 & R5).
FAC–014–1	R5.1	The Reliability Coordinator shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area. For each IROL, the Reliability Coordinator shall provide the following supporting information:	Medium	High	1, 3 (Consistent with IRO–004–1 R4 & R5).

* Requirements whose proposed Violation Risk Factor assignment NERC identifies as meriting reconsideration.
Guideline 1: Violation Risk Factor assignment not consistent with Final Blackout Report conclusions.
Guideline 3: Violation Risk Factor assignment not consistent among Reliability Standards with similar Reliability Requirements.

Appendix B: Commenters on Notice of Proposed Rulemaking

Abbreviation	Entity
Ameren	Ameren Service Co.
APPA	American Public Power Association
BPA+	Bonneville Power Administration
Duke	Duke Energy Corporation
EEI	Edison Electric Institute
EPSA	Electric Power Supply Association
FirstEnergy+	FirstEnergy Service Company
IESO	Independent Electricity System Operator of Ontario
ISO/RTO Council.	ISO/RTO Council
MidAmerican	MidAmerican Energy Company and PacifiCorp
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
NERC	North American Electric Reliability Corp.
NYISO+	New York Independent System Operator, Inc.
NRECA	National Rural Electric Cooperative Association
NYSRC	New York State Reliability Council, LLC
Ontario IESO+.	Ontario Independent Electricity System Operator
Progress Energy.	Progress Energy, Inc.
Santa Clara	City of Santa Clara, California, doing business as Silicon Valley Power
SoCal Edison	Southern California Edison Company
Southern	Southern Company Services, Inc.
WECC	Western Electricity Coordinating Council
Xcel	Xcel Energy Services

+Comments filed out-of-time.

BILLING CODE 6717–01–P

Appendix C: FAC Reliability Standards

Standard FAC-010-1 — System Operating Limits Methodology for the Planning Horizon

A. Introduction

1. **Title:** **System Operating Limits Methodology for the Planning Horizon**
2. **Number:** FAC-010-1
3. **Purpose:** To ensure that System Operating Limits (SOLs) used in the reliable planning of the Bulk Electric System (BES) are determined based on an established methodology or methodologies.
4. **Applicability**

   4.1. Planning Authority
5. **Effective Date:** July 1, 2007

B. Requirements

R1. The Planning Authority shall have a documented SOL Methodology for use in developing SOLs within its Planning Authority Area. This SOL Methodology shall:

R1.1. Be applicable for developing SOLs used in the planning horizon.

R1.2. State that SOLs shall not exceed associated Facility Ratings.

R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs.

R2. The Planning Authority's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:

R2.1. In the pre-contingency state and with all Facilities in service, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect expected system conditions and shall reflect changes to system topology such as Facility outages.

R2.2. Following the single Contingencies[1] identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading Outages or uncontrolled separation shall not occur.

R2.2.1. Single line to ground or three-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.

R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.

R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.

[1] The Contingencies identified in R2.2.1 through R2.2.3 are the minimum contingencies that must be studied but are not necessarily the only Contingencies that should be studied.

R2.3. Starting with all Facilities in service, the system's response to a single Contingency, may include any of the following:

R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.

R2.3.2. System reconfiguration through manual or automatic control or protection actions.

R2.3.3. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.

R2.4. Starting with all facilities in service and following any of the multiple Contingencies identified in Reliability Standard TPL-003 the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading Outages or uncontrolled separation shall not occur.

R2.5. In determining the system's response to any of the multiple Contingencies, identified in Reliability Standard TPL-003, in addition to the actions identified in R2.3.1 and R2.3.2, the following shall be acceptable:

R2.5.1. Planned or controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power Transfers

R3. The Planning Authority's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability margins applied for each:

R3.1. Study model (must include at least the entire Planning Authority Area as well as the critical modeling details from other Planning Authority Areas that would impact the Facility or Facilities under study).

R3.2. Selection of applicable Contingencies.

R3.3. Level of detail of system models used to determine SOLs.

R3.4. Allowed uses of Special Protection Systems or Remedial Action Plans.

R3.5. Anticipated transmission system configuration, generation dispatch and Load level.

R3.6. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_v.

R4. The Planning Authority shall issue its SOL Methodology, and any change to that methodology, to all of the following prior to the effectiveness of the change:

R4.1. Each adjacent Planning Authority and each Planning Authority that indicated it has a reliability-related need for the methodology.

R4.2. Each Reliability Coordinator and Transmission Operator that operates any portion of the Planning Authority's Planning Authority Area.

R4.3. Each Transmission Planner that works in the Planning Authority's Planning Authority Area.

R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Planning Authority shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.

C. Measures

M1. The Planning Authority's SOL Methodology shall address all of the items listed in Requirement 1 through Requirement 3.

M2. The Planning Authority shall have evidence it issued its SOL Methodology and any changes to that methodology, including the date they were issued, in accordance with Requirement 4.

M3. If the recipient of the SOL Methodology provides documented comments on its technical review of that SOL methodology, the Planning Authority that distributed that SOL Methodology shall have evidence that it provided a written response to that commenter within 45 calendar days of receipt of those comments in accordance with Requirement 5.

D. Compliance

1. Compliance Monitoring Process

1.1. Compliance Monitoring Responsibility

Regional Reliability Organization

1.2. Compliance Monitoring Period and Reset Time Frame

Each Planning Authority shall self-certify its compliance to the Compliance Monitor at least once every three years. New Planning Authorities shall demonstrate compliance through an on-site audit conducted by the Compliance Monitor within the first year that it commences operation. The Compliance Monitor shall also conduct an on-site audit once every nine years and an investigation upon complaint to assess performance.

The Performance-Reset Period shall be twelve months from the last non-compliance.

1.3. Data Retention

The Planning Authority shall keep all superseded portions to its SOL Methodology for 12 months beyond the date of the change in that methodology and shall keep all documented comments on its SOL Methodology and associated

responses for three years. In addition, entities found non-compliant shall keep information related to the non-compliance until found compliant.

The Compliance Monitor shall keep the last audit and all subsequent compliance records.

1.4. Additional Compliance Information

The Planning Authority shall make the following available for inspection during an on-site audit by the Compliance Monitor or within 15 business days of a request as part of an investigation upon complaint:

1.4.1 SOL Methodology.

1.4.2 Documented comments provided by a recipient of the SOL Methodology on its technical review of a SOL Methodology, and the associated responses.

1.4.3 Superseded portions of its SOL Methodology that had been made within the past 12 months.

1.4.4 Evidence that the SOL Methodology and any changes to the methodology that occurred within the past 12 months were issued to all required entities.

2. Levels of Non-Compliance (Does not apply to the Western Interconnection)

2.1. Level 1: There shall be a level one non-compliance if either of the following conditions exists:

2.1.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded.

2.1.2 No evidence of responses to a recipient's comments on the SOL Methodology.

2.2. Level 2: The SOL Methodology did not include a requirement to address all of the elements in R2.

2.3. Level 3: There shall be a level three non-compliance if either of the following conditions exists:

2.3.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded **and** the methodology did not include a requirement for evaluation of system response to one of the three types of single Contingencies identified in R2.2.

2.3.2 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded **and** the methodology did not address two of the six required topics in R3.

2.4. Level 4: The SOL Methodology was not issued to all required entities in accordance with R4.

3. Levels of Non-Compliance for Western Interconnection:

3.1. Level 1: There shall be a level one non-compliance if either of the following conditions exists:

3.1.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded.

3.1.2 No evidence of responses to a recipient's comments on the SOL Methodology.

3.2. Level 2: The SOL Methodology did not include a requirement to address all of the elements in R2.1 through R2.3 and E1.

3.3. Level 3: There shall be a level three non-compliance if any of the following conditions exists:

3.3.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not include evaluation of system response to one of the three types of single Contingencies identified in R2.2.

3.3.2 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not include evaluation of system response to two of the seven types of multiple Contingencies identified in E1.1.

3.3.3 The System Operating Limits Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not address two of the six required topics in R3.

3.4. Level 4: The SOL Methodology was not issued to all required entities in accordance with R4.

E. Regional Differences

1. The following Interconnection-wide Regional Difference shall be applicable in the Western Interconnection:

1.1. As governed by the requirements of R2.4 and R2.5, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:

1.1.1 Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.

1.1.2 A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7

1.1.3 Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.

1.1.4 The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.

1.1.5 A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.

1.1.6 A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.

1.1.7 The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.

1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:

1.2.1 All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.

1.2.2 Cascading Outages do not occur.

1.2.3 Uncontrolled separation of the system does not occur.

1.2.4 The system demonstrates transient, dynamic and voltage stability.

1.2.5 Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.

1.2.6 Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.

1.2.7 To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.

1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on other systems:

1.3.1 Cascading Outages do not occur.

1.4. The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.

Version History

Version	Date	Action	Change Tracking
1	November 21, 2006	Adopted by Board of Trustees	New
1	November 1, 2006	Fixed typo. Removed the word "each" from the 1st sentence of section D.1.3, Data Retention.	01/11/07

A. Introduction

1. **Title:** **System Operating Limits Methodology for the Operations Horizon**
2. **Number:** FAC-011-1
3. **Purpose:** To ensure that System Operating Limits (SOLs) used in the reliable operation of the Bulk Electric System (BES) are determined based on an established methodology or methodologies.
4. **Applicability**

   4.1. Reliability Coordinator
5. **Effective Date:** October 1, 2007

B. Requirements

R1. The Reliability Coordinator shall have a documented methodology for use in developing SOLs (SOL Methodology) within its Reliability Coordinator Area. This SOL Methodology shall:

R1.1. Be applicable for developing SOLs used in the operations horizon.

R1.2. State that SOLs shall not exceed associated Facility Ratings.

R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs.

R2. The Reliability Coordinator's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:

R2.1. In the pre-contingency state, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect current or expected system conditions and shall reflect changes to system topology such as Facility outages.

R2.2. Following the single Contingencies[1] identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading Outages or uncontrolled separation shall not occur.

R2.2.1. Single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.

R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.

R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.

[1] The Contingencies identified in FAC-010 R2.2.1 through R2.2.3 are the minimum contingencies that must be studied but are not necessarily the only Contingencies that should be studied.

R2.3. In determining the system's response to a single Contingency, the following shall be acceptable:

R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.

R2.3.2. Interruption of other network customers, only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or, if the real-time operating conditions are more adverse than anticipated in the corresponding studies, e.g., load greater than studied.

R2.3.3. System reconfiguration through manual or automatic control or protection actions.

R2.4. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.

R3. The Reliability Coordinator's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability margins applied for each:

R3.1. Study model (must include at least the entire Reliability Coordinator Area as well as the critical modeling details from other Reliability Coordinator Areas that would impact the Facility or Facilities under study.)

R3.2. Selection of applicable Contingencies

R3.3. A process for determining which of the stability limits associated with the list of multiple contingencies (provided by the Planning Authority in accordance with FAC-014 Requirement 6) are applicable for use in the operating horizon given the actual or expected system conditions.

R3.3.1. This process shall address the need to modify these limits, to modify the list of limits, and to modify the list of associated multiple contingencies.

R3.4. Level of detail of system models used to determine SOLs.

R3.5. Allowed uses of Special Protection Systems or Remedial Action Plans.

R3.6. Anticipated transmission system configuration, generation dispatch and Load level

R3.7. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_V.

R4. The Reliability Coordinator shall issue its SOL Methodology and any changes to that methodology, prior to the effectiveness of the Methodology or of a change to the Methodology, to all of the following:

R4.1. Each adjacent Reliability Coordinator and each Reliability Coordinator that indicated it has a reliability-related need for the methodology.

R4.2. Each Planning Authority and Transmission Planner that models any portion of the Reliability Coordinator's Reliability Coordinator Area.

R4.3. Each Transmission Operator that operates in the Reliability Coordinator Area.

R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Reliability Coordinator shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.

C. Measures

M1. The Reliability Coordinator's SOL Methodology shall address all of the items listed in Requirement 1 through Requirement 3.

M2. The Reliability Coordinator shall have evidence it issued its SOL Methodology, and any changes to that methodology, including the date they were issued, in accordance with Requirement 4.

M3. If the recipient of the SOL Methodology provides documented comments on its technical review of that SOL methodology, the Reliability Coordinator that distributed that SOL Methodology shall have evidence that it provided a written response to that commenter within 45 calendar days of receipt of those comments in accordance with Requirement 5

D. Compliance

1. Compliance Monitoring Process

1.1. Compliance Monitoring Responsibility

Regional Reliability Organization

1.2. Compliance Monitoring Period and Reset Time Frame

Each Reliability Coordinator shall self-certify its compliance to the Compliance Monitor at least once every three years. New Reliability Authorities shall demonstrate compliance through an on-site audit conducted by the Compliance Monitor within the first year that it commences operation. The Compliance Monitor shall also conduct an on-site audit once every nine years and an investigation upon complaint to assess performance.

The Performance-Reset Period shall be twelve months from the last non-compliance.

1.3. Data Retention

The Reliability Coordinator shall keep all superseded portions to its SOL Methodology for 12 months beyond the date of the change in that methodology and shall keep all documented comments on its SOL Methodology and associated responses for three years. In addition, entities found non-compliant shall keep information related to the non-compliance until found compliant.

The Compliance Monitor shall keep the last audit and all subsequent compliance records.

1.4. Additional Compliance Information

The Reliability Coordinator shall make the following available for inspection during an on-site audit by the Compliance Monitor or within 15 business days of a request as part of an investigation upon complaint:

1.4.1 SOL Methodology.

1.4.2 Documented comments provided by a recipient of the SOL Methodology on its technical review of a SOL Methodology, and the associated responses.

1.4.3 Superseded portions of its SOL Methodology that had been made within the past 12 months.

1.4.4 Evidence that the SOL Methodology and any changes to the methodology that occurred within the past 12 months were issued to all required entities.

2. Levels of Non-Compliance (Does not apply to the Western Interconnection)

2.1. Level 1: There shall be a level one non-compliance if either of the following conditions exists:

2.1.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded.

2.1.2 No evidence of responses to a recipient's comments on the SOL Methodology.

2.2. Level 2: The SOL Methodology did not include a requirement to address all of the elements in R3.

2.3. Level 3: There shall be a level three non-compliance if either of the following conditions exists:

2.3.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded **and** the methodology did not include a requirement for evaluation of system response to one of the three types of single Contingencies identified in R2.2.

2.3.2 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded **and** the methodology did not address two of the seven required topics in R3.

2.4. Level 4: The SOL Methodology was not issued to all required entities in accordance with R4.

3. Levels of Non-Compliance for Western Interconnection:

3.1. Level 1: There shall be a level one non-compliance if either of the following conditions exists:

3.1.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded.

3.1.2 No evidence of responses to a recipient's comments on the SOL Methodology

3.2. Level 2: The SOL Methodology did not include a requirement to address all of the elements in R3.1, R3.2, R3.4 through R3.7 and E1.

3.3. Level 3: There shall be a level three non-compliance if any of the following conditions exists:

3.3.1 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not include evaluation of system response to one of the three types of single Contingencies identified in R2.2.

3.3.2 The SOL Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not include evaluation of system response to two of the seven types of multiple Contingencies identified in E1.1.

3.3.3 The System Operating Limits Methodology did not include a statement indicating that Facility Ratings shall not be exceeded and the methodology did not address two of the six required topics in R3.1, R3.2, R3.4 through R3.7.

3.4. Level 4: The SOL Methodology was not issued to all required entities in accordance with R4.

E. Regional Differences

1. The following Interconnection-wide Regional Difference shall be applicable in the Western Interconnection:

1.1. As governed by the requirements of R3.3, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:

1.1.1 Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.

1.1.2 A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7

1.1.3 Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.

1.1.4 The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.

1.1.5 A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.

1.1.6 A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-011.

1.1.7 The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.

1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:

1.2.1 All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.

1.2.2 Cascading Outages do not occur.

1.2.3 Uncontrolled separation of the system does not occur.

1.2.4 The system demonstrates transient, dynamic and voltage stability.

1.2.5 Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.

1.2.6 Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.

1.2.7 To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.

1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on other systems:

1.3.1 Cascading Outages do not occur.

1.4. The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.

Version History

Version	Date	Action	Change Tracking
1	November 1, 2006	Adopted by Board of Trustees	New

A. Introduction

1. **Title:** **Establish and Communicate System Operating Limits**
2. **Number:** FAC-014-1
3. **Purpose:** To ensure that System Operating Limits (SOLs) used in the reliable planning and operation of the Bulk Electric System (BES) are determined based on an established methodology or methodologies.
4. **Applicability**
   - **4.1.** Reliability Coordinator
   - **4.2.** Planning Authority
   - **4.3.** Transmission Planner
   - **4.4.** Transmission Operator
5. **Effective Date:** January 1, 2008

B. Requirements

R1. The Reliability Coordinator shall ensure that SOLs, including Interconnection Reliability Operating Limits (IROLs), for its Reliability Coordinator Area are established and that the SOLs (including Interconnection Reliability Operating Limits) are consistent with its SOL Methodology.

R2. The Transmission Operator shall establish SOLs (as directed by its Reliability Coordinator) for its portion of the Reliability Coordinator Area that are consistent with its Reliability Coordinator's SOL Methodology.

R3. The Planning Authority shall establish SOLs, including IROLs, for its Planning Authority Area that are consistent with its SOL Methodology.

R4. The Transmission Planner shall establish SOLs, including IROLs, for its Transmission Planning Area that are consistent with its Planning Authority's SOL Methodology.

R5. The Reliability Coordinator, Planning Authority and Transmission Planner shall each provide its SOLs and IROLs to those entities that have a reliability-related need for those limits and provide a written request that includes a schedule for delivery of those limits as follows:

R5.1. The Reliability Coordinator shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area. For each IROL, the Reliability Coordinator shall provide the following supporting information:

R5.1.1. Identification and status of the associated Facility (or group of Facilities) that is (are) critical to the derivation of the IROL.

R5.1.2. The value of the IROL and its associated T_v.

R5.1.3. The associated Contingency(ies).

R5.1.4. The type of limitation represented by the IROL (e.g., voltage collapse, angular stability).

R5.2. The Transmission Operator shall provide any SOLs it developed to its Reliability Coordinator and to the Transmission Service Providers that share its portion of the Reliability Coordinator Area.

R5.3. The Planning Authority shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Planning Authorities, and to Transmission Planners, Transmission Service Providers, Transmission Operators and Reliability Coordinators that work within its Planning Authority Area.

R5.4. The Transmission Planner shall provide its SOLs (including the subset of SOLs that are IROLs) to its Planning Authority, Reliability Coordinators, Transmission Operators, and Transmission Service Providers that work within its Transmission Planning Area and to adjacent Transmission Planners.

R6. The Planning Authority shall identify the subset of multiple contingencies (if any), from Reliability Standard TPL-003 which result in stability limits.

R6.1. The Planning Authority shall provide this list of multiple contingencies and the associated stability limits to the Reliability Coordinators that monitor the facilities associated with these contingencies and limits.

R6.2. If the Planning Authority does not identify any stability-related multiple contingencies, the Planning Authority shall so notify the Reliability Coordinator.

C. Measures

M1. The Reliability Coordinator, Planning Authority, Transmission Operator, and Transmission Planner shall each be able to demonstrate that it developed its SOLs (including the subset of SOLs that are IROLs) consistent with the applicable SOL Methodology in accordance with Requirements 1 through 4.

M2. The Reliability Coordinator, Planning Authority, Transmission Operator, and Transmission Planner shall each have evidence that its SOLs (including the subset of SOLs that are IROLs) were supplied in accordance with schedules supplied by the requestors of such SOLs as specified in Requirement 5.

M3. The Planning Authority shall have evidence it identified a list of multiple contingencies (if any) and their associated stability limits and provided the list and the limits to its Reliability Coordinators in accordance with Requirement 6.

D. Compliance

1. Compliance Monitoring Process

1.1. Compliance Monitoring Responsibility

Regional Reliability Organization

1.2. Compliance Monitoring Period and Reset Time Frame

The Reliability Coordinator, Planning Authority, Transmission Operator, and Transmission Planner shall each verify compliance through self-certification submitted to its Compliance Monitor annually. The Compliance Monitor may conduct a targeted audit once in each calendar year (January – December) and an investigation upon a complaint to assess performance.

The Performance-Reset Period shall be twelve months from the last finding of non-compliance.

1.3. Data Retention

The Reliability Coordinator, Planning Authority, Transmission Operator, and Transmission Planner shall each keep documentation for 12 months. In addition, entities found non-compliant shall keep information related to non-compliance until found compliant.

The Compliance Monitor shall keep the last audit and all subsequent compliance records.

1.4. Additional Compliance Information

The Reliability Coordinator, Planning Authority, Transmission Operator, and Transmission Planner shall each make the following available for inspection during a targeted audit by the Compliance Monitor or within 15 business days of a request as part of an investigation upon complaint:

1.4.1 SOL Methodology(ies)

1.4.2 SOLs, including the subset of SOLs that are IROLs and the IROLs supporting information

1.4.3 Evidence that SOLs were distributed

1.4.4 Evidence that a list of stability-related multiple contingencies and their associated limits were distributed

1.4.5 Distribution schedules provided by entities that requested SOLs

2. Levels of Non-Compliance

2.1. Level 1: Not applicable.

2.2. Level 2: Not all SOLs were provided in accordance with their respective schedules.

2.3. Level 3: SOLs provided were not developed consistent with the SOL Methodology.

2.4. Level 4: There shall be a level four non-compliance if either of the following conditions exist:

2.4.1 No SOLs were provided in accordance with their respective schedules.

2.4.2 No evidence the Planning Authority delivered a set of stability-related multiple contingencies and their associated limits to Reliability Coordinators in accordance with R6.

E. Regional Differences

None identified.

Version History

Version	Date	Action	Change Tracking
1	November 1, 2006	Adopted by Board of Trustees	New

[FR Doc. E7–25488 Filed 1–8–08; 8:45 am]
BILLING CODE 6717–01–C

Federal Register

Wednesday,
January 9, 2008

Part V

The President

Memorandum of December 27, 2007—Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Federal Register
Vol. 73, No. 6
Wednesday, January 9, 2008

Presidential Documents

Title 3—

The President

Memorandum of December 27, 2007

Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and laws of the United States including 49 U.S.C. 44302, *et seq.*, I hereby:

1. Determine that continuation of U.S.-flag commercial air service is necessary in the interest of air commerce, national security, and the foreign policy of the United States.

2. Approve provision by the Secretary of Transportation (Secretary) of insurance or reinsurance to U.S.-flag air carriers against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in chapter 443 of 49 U.S.C.:

(a) until August 31, 2008;

(b) after August 31, 2008, but no later than December 31, 2008, when the Secretary determines that such insurance or reinsurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States; and

3. Delegate to the Secretary the authority, vested in me by 49 U.S.C. 44306(c), to extend this determination for additional periods beyond August 31, 2008, but no later than December 31, 2008, when the Secretary finds that the continued operation of aircraft to be insured or reinsured is necessary in the interest of air commerce or the national security, or to carry out the foreign policy of the United States Government.

You are directed to bring this determination immediately to the attention of all air carriers within the meaning of 49 U.S.C. 40102(2), and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 27, 2007.

[FR Doc. 08–75
Filed 1–8–08; 11:15 am]
Billing code 4910–62–P

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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.

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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. 366/P.L. 110–156
To designate the Department of Veterans Affairs Outpatient Clinic in Tulsa, Oklahoma, as the "Ernest Childers Department of Veterans Affairs Outpatient Clinic". (Dec. 26, 2007; 121 Stat. 1830)

H.R. 797/P.L. 110–157
Dr. James Allen Veteran Vision Equity Act of 2007 (Dec. 26, 2007; 121 Stat. 1831)

H.R. 1045/P.L. 110–158
To designate the Federal building located at 210 Walnut Street in Des Moines, Iowa, as the "Neal Smith Federal Building". (Dec. 26, 2007; 121 Stat. 1837)

H.R. 2011/P.L. 110–159
To designate the Federal building and United States courthouse located at 100 East 8th Avenue in Pine Bluff, Arkansas, as the "George Howard, Jr. Federal Building and United States Courthouse". (Dec. 26, 2007; 121 Stat. 1838)

H.R. 2761/P.L. 110–160
Terrorism Risk Insurance Program Reauthorization Act of 2007 (Dec. 26, 2007; 121 Stat. 1839)

H.R. 2764/P.L. 110–161
Consolidated Appropriations Act, 2008 (Dec. 26, 2007; 121 Stat. 1844)

H.R. 3470/P.L. 110–162
To designate the facility of the United States Postal Service located at 744 West Oglethorpe Highway in Hinesville, Georgia, as the ''John Sidney 'Sid' Flowers Post Office Building''. (Dec. 26, 2007; 121 Stat. 2457)

H.R. 3569/P.L. 110–163
To designate the facility of the United States Postal Service located at 16731 Santa Ana Avenue in Fontana, California, as the ''Beatrice E. Watson Post Office Building''. (Dec. 26, 2007; 121 Stat. 2458)

H.R. 3571/P.L. 110–164
To amend the Congressional Accountability Act of 1995 to permit individuals who have served as employees of the Office of Compliance to serve as Executive Director, Deputy Executive Director, or General Counsel of the Office, and to permit individuals appointed to such positions to serve one additional term. (Dec. 26, 2007; 121 Stat. 2459)

H.R. 3974/P.L. 110–165
To designate the facility of the United States Postal Service located at 797 Sam Bass Road in Round Rock, Texas, as the ''Marine Corps Corporal Steven P. Gill Post Office Building''. (Dec. 26, 2007; 121 Stat. 2460)

H.R. 3996/P.L. 110–
66 Tax Increase Prevention Act of 2007 (Dec. 26, 2007; 121 Stat. 2461)

H.R. 4009/P.L. 110–167
To designate the facility of the United States Postal Service located at 567 West Nepessing Street in Lapeer, Michigan, as the ''Turrill Post Office Building''. (Dec. 26, 2007; 121 Stat. 2462)

S. 1396/P.L. 110–168
To authorize a major medical facility project to modernize inpatient wards at the Department of Veterans Affairs Medical Center in Atlanta, Georgia. (Dec. 26, 2007; 121 Stat. 2463)

S. 1896/P.L. 110–169
To designate the facility of the United States Postal Service located at 11 Central Street in Hillsborough, New Hampshire, as the ''Officer Jeremy Todd Charron Post Office''. (Dec. 26, 2007; 121 Stat. 2464)

S. 1916/P.L. 110–170
Chimp Haven is Home Act (Dec. 26, 2007; 121 Stat. 2465)

S.J. Res. 13/P.L. 110–171
Granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding. (Dec. 26, 2007; 121 Stat. 2467)

H.R. 4839/P.L. 110–172
Tax Technical Corrections Act of 2007 (Dec. 29, 2007; 121 Stat. 2473)

S. 2499/P.L. 110–173
Medicare, Medicaid, and SCHIP Extension Act of 2007 (Dec. 29, 2007; 121 Stat. 2492)

S. 2271/P.L. 110–174
Sudan Accountability and Divestment Act of 2007 (Dec. 31, 2007; 121 Stat. 2516)

S. 2488/P.L. 110–175
Openness Promotes Effectiveness in our National Government Act of 2007 (Dec. 31, 2007; 121 Stat. 2524)

S. 2436/P.L. 110–176

To amend the Internal Revenue Code of 1986 to clarify the term of the Commissioner of Internal Revenue. (Jan. 4, 2008; 121 Stat. 2532)

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