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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1016

[Docket No. CFPB–2011–0028]

RIN 3170–AA06

Privacy of Consumer Financial Information (Regulation P)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011, including most provisions of Subtitle A of Title V of the Gramm-Leach-Bliley Act (GLB Act), with respect to financial institutions described in section 504 of the GLB Act. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of rulemaking authority for the privacy provisions of the GLB Act to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation P (Privacy of Consumer Financial Information). This interim final rule does not impose any new substantive obligations on regulated entities.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0028* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Courtney Jean or Priscilla Walton-Fein, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle A of Title V of the GLB Act,[1] captioned ''Disclosure of Nonpublic Personal Information,'' limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties and requires financial institutions to provide certain privacy notices to their consumers and customers.[2] Prior to July 21, 2011, rulemaking authority for the privacy provisions of the GLB Act was shared by eight Federal agencies: the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), the National Credit Union Association (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Securities Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). Each of the agencies issued rules (which were consistent and comparable) to implement the GLB Act's privacy provisions.[3]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] amended a number of consumer financial protection laws, including the GLB Act. Among other changes, the Dodd-Frank Act transferred rulemaking authority for most of Subtitle A of Title V of the GLB Act, with respect to financial institutions described in section 504(a)(1)(A) of that Act, from the Board, FDIC, FTC, NCUA, OCC, and OTS (collectively, the transferor agencies) to the Bureau, effective July 21, 2011. Pursuant to the GLB Act, the FTC retains rulemaking authority over any financial institution that is a person described in 12 U.S.C. 5519.[5] The SEC and the CFTC, which are not transferor agencies, also retain rulemaking authority over certain institutions described in sections 504(a)(1)(A)–(B) of the GLB Act.[6] *See* sections 1061 and 1093 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the GLB Act, as amended, the

[1] Codified at 15 U.S.C. 6801–6809. Section 728 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351, 120 Stat. 1966 (2006)) amended the GLB Act to require the development of a model privacy form that financial institutions may rely on as a safe harbor to provide privacy notices.

[2] 15 U.S.C. 6802–6803(a).

[3] 12 CFR 216 (Board); 12 CFR 332 (FDIC); 16 CFR 313 (FTC); 12 CFR 716 and 741.220 (NCUA); 12 CFR 40 (OCC); 12 CFR 573 (OTS); 17 CFR 248 (SEC); 17 CFR 160 (CFTC).

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] 15 U.S.C. 6804(a)(1)(A), (C). With certain statutory exceptions, the FTC generally retains rulemaking authority for motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. *Id.;* 12 U.S.C. 5519(a)–(b).

[6] 15 U.S.C. 6804(a)(1)(A)–(B). The SEC has rulemaking authority over securities brokers and dealers, investment companies, and investment advisers registered with the SEC under the Investment Advisers Act of 1940. *Id.* at 6804(a)(1)(A), 6805(a)(3)–(5). The CFTC has rulemaking authority over futures commission merchants, commodity trading advisors, commodity pool operators, and introducing brokers subject to the CFTC's jurisdiction under the Commodity Exchange Act with respect to any financial activity. 15 U.S.C. 6804(a)(1)(B); 7 U.S.C. 7b–2(a).

Bureau is publishing for public comment an interim final rule establishing a new Regulation P (Privacy of Consumer Financial Information), 12 CFR part 1016, implementing those privacy provisions of the GLB Act for which the Bureau has rulemaking authority.

II. Summary of the Interim Final Rule

A. General

The interim final rule combines the transferor agencies' existing rules, with the exception of the FTC's existing rule as it relates to entities described in section 504(a)(1)(C) of the GLB Act[7] as the Bureau's new Regulation P, 12 CFR part 1016. The Bureau's new Regulation P makes only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, the Bureau is substantially preserving the numbering of the Board's Regulation P, other than the new part number. While this interim final rule generally incorporates the transferor agencies' existing regulatory text and appendices (including model forms), the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities.

B. Specific Changes

References to the transferor agencies and their administrative structure have been replaced with appropriate references to the Bureau. Conforming edits have been made to internal cross-references and to reflect the scope of the Bureau's authority pursuant to the GLB Act, as amended by the Dodd-Frank Act. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. Appendix B, which listed sample clauses for privacy notices and provided a safe harbor for privacy notices issued with those sample clauses before January 1, 2011, has also been removed, as have any internal cross-references to it. Appendix B was scheduled to be eliminated from each of the transferor agencies' privacy regulations on January 1, 2012.[8] Financial institutions that delivered annual notices to consumers on or before December 31, 2010 were entitled to rely on the safe harbor for one additional year until their next annual notice was due.[9] The removal of Appendix B by this interim final rule as of December 30, 2011 does not nullify the validity of privacy notices issued before January 1, 2011 using Appendix B's sample clauses, including during the intervening two days of December 30 and 31, 2011.

Certain changes have been made to preserve substantive differences in the transferor agencies' rules. To the extent the transferor agencies' rules substantively differed from one another, the interim final rule contains separate provisions for the financial institutions previously subject to the respective transferor agencies' rulemaking authority. For example, special rules related to joint relationships and loans were applicable to credit unions under the NCUA's privacy regulation. To preserve those special rules applicable to credit unions, the interim final rule contains separate sections for ''joint relationships in the case of credit unions'' and ''special rule for loans in the case of credit unions.'' Similarly, the FTC's privacy regulation defined ''financial institution'' more narrowly than the other transferor agencies' privacy regulations. The interim final rule therefore contains a separate definition of ''financial institution'' for entities subject to the FTC's enforcement jurisdiction. The interim final rule also incorporates specific examples from the NCUA and FTC's privacy rules.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the GLB Act and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[10] Sections 502 through 509 of the GLB Act, except for section 505 as it applies to section 501(b) (*i.e.,* enforcement of the GLB Act's requirements concerning data privacy safeguards), are a Federal consumer financial law.[11]

Accordingly, effective July 21, 2011, the transferor agencies' authority to issue regulations pursuant to those sections of the GLB Act transferred to the Bureau, with the exception of the FTC's authority to issue regulations for certain motor vehicle dealers, as described in section 504(a)(1)(C) of the GLB Act.[12]

The GLB Act, as amended, authorizes the Bureau to ''prescribe such regulations as may be necessary to carry out the purposes of [Subtitle A of Title V of the GLB Act],'' with respect to institutions subject to the Bureau's enforcement jurisdiction under section 505 of the GLB Act (and notwithstanding Subtitle B of Title X of the Dodd-Frank Act).[13] As already noted, the GLB Act excludes from the Bureau's rulemaking authority certain motor vehicle dealers described in 12 U.S.C. 5519 and provides the FTC rulemaking authority for those entities. The SEC and CFTC, which are not transferor agencies, also retain rulemaking authority over certain institutions described in sections 504(a)(1)(A)–(B) of the GLB Act.

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)[14] generally requires public notice and an opportunity to comment before promulgation of regulations.[15] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[16] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to

[7] 15 U.S.C. 6804(a)(1)(C). With certain statutory exceptions, those entities are motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. *See* 12 U.S.C. 5519(a)–(b).

[8] *See* 76 FR 62890 (Dec. 1, 2009).

[9] *See id.* at *62909 & n. 225.

[10] Public Law 111–203, section 1061(a)(1). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted ''all powers and duties'' vested in each of the Federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[11] Public Law 111–203, section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); *id.* Section 1002(12) (defining ''enumerated consumer laws'' to include sections 502 through 509 of the GLB Act, except for section 505 as it applies to section 501(b)).

[12] 15 U.S.C. 6804(a)(1)(C); 12 U.S.C. 5519(a)–(b). Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

[13] 15 U.S.C. 6804(a)(1)(A).

[14] 5 U.S.C. 551 *et seq.*

[15] 5 U.S.C. 553(b), (c).

[16] 5 U.S.C. 553(b)(3)(A), (B).

the public interest under these circumstances. In addition, substantially all changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of rulemaking authority for Subtitle A of Title V of the GLB Act from the transferor agencies to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the transferor agencies' existing regulations were the result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of those regulations, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority to the Bureau. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the transferor agencies' regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with Subtitle A of Title V of the GLB Act and its implementing regulations, and the new regulation will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulations, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[17]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[18] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulation P to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with the GLB Act and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

Although not required by the interim final rule, financial institutions may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation P. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the financial institution's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulation P, as well as regulations implementing thirteen other existing consumer financial laws,[19] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[20] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

[17] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[18] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[19] The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[20] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[21] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[22] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[23]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[24] and the panel requirement applies only when a rulemaking requires an IRFA.[25] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation P. The rule imposes no new, substantive obligations on covered entities. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0010.

List of Subjects in 12 CFR Part 1016

Banks, banking, Consumer protection, Credit, Credit unions, Foreign banking, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, Trade practices.

Authority and Issuance

■ For the reasons set forth above, the Bureau of Consumer Financial Protection adds Part 1016 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1016—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

Sec.

1016.1 Purpose and scope.
1016.2 Model privacy form and examples.
1016.3 Definitions.

Subpart A—Privacy and Opt Out Notices

1016.4 Initial privacy notice to consumers required.
1016.5 Annual privacy notice to customers required.
1016.6 Information to be included in privacy notices.
1016.7 Form of opt out notice to consumers; opt out methods.
1016.8 Revised privacy notices.
1016.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
1016.11 Limits on redisclosure and reuse of information.
1016.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

1016.13 Exception to opt out requirements for service providers and joint marketing.
1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
1016.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws

1016.16 Protection of Fair Credit Reporting Act.
1016.17 Relation to state laws.
Appendix to Part 1016—Model Privacy Form

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 6804.

§ 1016.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 1016.13, 1016.14, and 1016.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those financial institutions and other persons for which the Bureau of Consumer Financial Protection (Bureau) has rulemaking authority pursuant to section 504(a)(1)(A) of the Gramm-Leach-Bliley Act (GLB Act) (12 U.S.C. 6804(a)(1)(A)). Specifically, this part applies to any financial institution and other covered person or service provider that is subject to Subtitle A of Title V of the GLB Act, including third parties that are not financial institutions but that receive nonpublic personal information from financial institutions with whom they are not affiliated. This part does not apply to certain motor vehicle dealers described in 12 U.S.C. 5519 or to entities for which the Securities and Exchange Commission or the Commodity Futures Trading Commission has rulemaking authority pursuant to sections 504(a)(1)(A)–(B) of the GLB Act (12 U.S.C. 6804(a)(1)(A)–(B)). Except as otherwise specifically provided herein, entities to which this part applies are referred to in this part as ''you.''

(2)(i) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services

[21] 5 U.S.C. 601 *et seq.*

[22] 5 U.S.C. 603, 604.

[23] 5 U.S.C. 609.

[24] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[25] 5 U.S.C. 609(b).

under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

(ii) Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution described in § 1016.3(l)(3) of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

(3) Nothing in this part shall apply to:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any state, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a state insurance regulator.

§ 1016.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in the appendix to this part, consistent with the instructions in the appendix constitutes compliance with the notice content requirements of §§ 1016.6 and 1016.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 1016.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(2) *Examples in the case of a credit union.* (i) An affiliate of a Federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on Web sites.* If you provide a notice on a Web site, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples in the case of a financial institution other than a credit union.* For purposes of this paragraph (e)(2), ''you'' is limited to financial institutions other than credit unions.

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(3) *Examples in the case of a credit union.* For purposes of this paragraph (e)(3), ''you'' is limited to credit unions.

(i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a customer relationship.

(ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.

(iii) If you hold ownership or servicing rights to an individual's loan, the individual is your consumer, even if you hold those rights in conjunction with one or more financial institutions. The individual is also a consumer with respect to the other financial institutions involved. This applies even if you, or another financial institution with those rights, hire an agent to collect on the loan or to provide processing or other services.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)), if any.

(4) *Example in the case of credit unions.* A credit union is presumed to have a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(h) *Credit union* means a Federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) *Customer* means a consumer who has a customer relationship with you.

(j)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. As noted in the examples, and for purposes of this part only, in the case of a credit union, a customer relationship will exist between a credit union and certain consumers that are not the credit union's members.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (j)(2), ''you'' is limited to financial institutions other than credit unions and financial institutions described in paragraph (l)(3) of this section.

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (j)(3), ''you'' is limited to financial institutions described in paragraph (l)(3) of this section.

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(4) *Examples in the case of a credit union.* (i) *Continuing relationship.* A consumer has a continuing relationship with a credit union if the consumer:

(A) Is a member as defined in the credit union's bylaws;

(B) Is a nonmember who has a share, share draft, or credit card account with the credit union jointly with a member;

(C) Is a nonmember who has a loan that the credit union services;

(D) Is a nonmember who has an account with a credit union that has been designated as a low-income credit union; or

(E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with a credit union if the consumer is a nonmember and:

(A) The consumer only obtains a financial product or service in isolated transactions, such as using the credit union's ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or

(B) The credit union sells the consumer's loan and does not retain the rights to service that loan.

(k) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration Board; and

(5) The Securities and Exchange Commission.

(l)(1) Except for entities described in paragraph (l)(3) of this section, *financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) For purposes of paragraph (l)(1) of this section, *financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(3)(i) *Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.* In the case of an entity described in section 505(a)(7) of the GLB Act (other than such an entity described in section 504(a)(1)(C) of that Act), *financial institution* means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). For purposes of this paragraph (l)(3), an institution that is significantly engaged in financial activities is a financial institution.

(ii) *Examples of financial institution.* For purposes of this paragraph (l)(3):

(A) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(B) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(C) An automobile dealership that is not described in section 1029(a) of the Dodd-Frank Act (12 U.S.C. 5519(a)) and that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(D) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(E) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(F) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(G) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(H) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(I) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(J) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(K) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(L) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(iii) For purposes of this paragraph (l)(3), *financial institution* does not include:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(B) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§ 1016.14 and 1016.15 of this part.

(D) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(iv) *Examples of entities that are not significantly engaged in financial activities.* (A) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(B) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(C) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(D) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(m)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.* In the case of an entity described in section 505(a)(7) of the GLB Act (other than such an entity described in section 504(a)(1)(C) of that Act), *financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(3) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(n) *Member* means a consumer who is a member of a credit union, as defined in the credit union's bylaws.

(o)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes, for financial institutions other than credit unions, any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(p)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (p)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(q)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, a credit card, a credit union membership, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a loan or a credit account;

(F) Any information you collect through an internet ''cookie'' (an information collecting device from a Web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(r)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, state, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples.* (i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis. A Web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(s)(1) *You* means a financial institution or other person for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLB Act (15 U.S.C. 6804(a)(1)(A)).

(2) *You* does not include:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

Subpart A—Privacy and Opt Out Notices

§ 1016.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 1016.14 and 1016.15 of this part.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 1016.14 and 1016.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship.* (1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a customer relationship with a consumer when you originate or acquire the servicing rights to a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3) *Examples.* (i) *Examples of establishing customer relationship by financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(i), ''you'' is limited to financial institutions other than credit unions and financial institutions described in § 1016.3(l)(3). You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of establishing customer relationship by covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(ii), ''you'' is limited to financial institutions described in § 1016.3(l)(3) of this part. You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee;

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer's online financial accounts at your Web site.

(iii) *Examples of establishing customer relationship by credit unions.* For purposes of this paragraph (c)(3)(iii), ''you'' is limited to a credit union. You establish a customer relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to State law and you are a State-chartered credit union.

(iv) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 1016.8 of this part, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at customer's election.* (A) In the case of financial institutions other than credit unions and financial institutions described in § 1016.3(l)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(B) In the case of financial institutions described in § 1016.3(l)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a Web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 1016.9 of this part. If you use a short-form initial notice for non-customers according to § 1016.6(d) of this part, you may deliver your privacy notice according to § 1016.6(d)(3).

§ 1016.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(2), ''you'' is limited to financial institutions other than credit unions and financial institutions described in § 1016.3(l)(3). Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(3), ''you'' is limited to financial institutions described in § 1016.3(l)(3) of this part. Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(4) *Examples in the case of a credit union.* An individual becomes a former customer of a credit union when:

(i) The individual is no longer the credit union's member as defined in the credit union's bylaws;

(ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, the credit union charges off the loan, or the credit union sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship with a nonmember, the credit union no longer provides any statements or notices to the nonmember concerning that relationship, or the credit union sells the credit card receivables without retaining servicing rights; or

(v) The credit union has not communicated with the nonmember about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans in the case of a financial institution other than a credit union.* If a financial institution other than a credit union does not have a customer relationship with a consumer under the special rule for loans in § 1016.4(c)(2) of this part, then it need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 1016.9 of this part.

§ 1016.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 1016.4, 1016.5, and 1016.8 of this part must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15 of this part;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 1016.13 (and no other exception in § 1016.14 or § 1016.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 1016.10(a) of this part to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 1016.14 and 1016.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 1016.4 and 1016.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

(c) *Examples.* (1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents;

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 1016.13 of this part to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you

satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 1016.14 and 1016.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers.* (1) You may satisfy the initial notice requirements in §§ 1016.4(a)(2), 1016.7(b), and 1016.7(c) of this part for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 1016.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 1016.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 1016.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Model privacy form.* Pursuant to § 1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 1016.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 1016.6(a)(2) and (3) of this part, and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice that, in the case of financial institutions described in § 1016.3(l)(3) of this part, includes the address to which the form should be mailed;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 1016.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 1016.4 of this part, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (d), ''you'' is limited to financial institutions other than credit unions and financial institutions described in § 1016.3(l)(3) of this part.

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may provide only a single opt out notice. The opt out notice must explain how the credit union will treat an opt out direction by a joint consumer (as explained in the examples in paragraph (e)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. A credit union may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If a credit union permits each joint consumer to opt out separately, the credit union must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A credit union may not require all joint consumers to opt out before the credit union implements any opt out direction.

(5) *Example.* If John and Mary have a joint share account with a credit union and arrange for the credit union to send statements to John's address, the credit union may do any of the following, but it must explain in its opt out notice which opt out policy it will follow:

(i) Send a single opt out notice to John's address, but it must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If it does so, and John opts out, it may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If it does so, and if John and Mary both opt out, it must permit one or both of them to notify it in a single response (such as on a form or through a telephone call).

(6) *Special rule for loans.* (i) A credit union is required to provide an initial opt out notice to a borrower or guarantor on a loan if it shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy its annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

(f) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (f), ''you'' is limited to the financial institutions described in § 1016.3(l)(3).

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (f)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(g) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(h) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(i) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(j) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 1016.9 of this part.

(k) *Model privacy form.* Pursuant to § 1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 1016.4 of this part, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 1016.13, 1016.14, and 1016.15 of this part, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 1016.9 of this part.

§ 1016.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in § 1016.3(l)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in § 1016.3(l)(3), clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not,* however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by § 1016.4(a)(1), the annual notice required by § 1016.5(a), and the revised notice required by § 1016.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (g), ''you'' is limited to financial institutions other than credit unions and the financial institutions described in § 1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 1016.4(a), 1016.5(a), and 1016.8(a), respectively, by providing one notice to those consumers jointly.

(h) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (h), ''you'' is limited to the financial institutions described in § 1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 1016.4(a), 1016.5(a), and 1016.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

(i) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may satisfy the requirements of § 1016.4(a) by providing one initial notice to those consumers jointly.

(2) *Special rule for loans in the case of credit unions.* (i) A credit union is required to provide an initial notice to a borrower or guarantor on a loan if the credit union shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy the annual notice requirements of § 1016.5 by providing one notice to those borrowers and guarantors jointly.

Subpart B—Limits on Disclosures

§ 1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 1016.4 of this part;

(ii) You have provided to the consumer an opt out notice as required in § 1016.7 of this part;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 1016.13, 1016.14, and 1016.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an online account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 1016.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 1016.14 or § 1016.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 1016.14(a), you may disclose that information under any exception in § 1016.14 or § 1016.15 in the ordinary course of business in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or, in the case of financial institutions other than those described in § 1016.3(l)(3), to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 1016.14 or § 1016.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in §§ 1016.14 and 1016.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 1016.14 or § 1016.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 1016.14 or § 1016.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 1016.14 or § 1016.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 1016.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, share account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples.* (1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account, a share account, or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 1016.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 1016.7 and 1016.10 of this part do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 1016.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 1016.4(a)(2), for the opt out in §§ 1016.7 and 1016.10, and for service providers and joint marketing in § 1016.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 1016.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 1016.4(a)(2), for the opt out in §§ 1016.7 and 1016.10, and for service providers and joint marketing in § 1016.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including the Bureau, a Federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, state, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 1016.7(h) of this part.

Subpart D—Relation to Other Laws

§ 1016.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 1016.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any state, except to the extent that such state statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Bureau, on its own motion or upon the petition of any interested party, after consultation with the agency or authority with jurisdiction under section 505(a) of the GLB Act (15 U.S.C. 6805(a)) over either the person that initiated the complaint or that is the subject of the complaint.

Appendix to Part 1016—Model Privacy Form

A. The Model Privacy Form

BILLING CODE 4810–AM–P

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS	**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call **[phone number]**—our menu will prompt you through your choice(s) **or** ■ Visit us online: **[website]** **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call **[phone number]**—our menu will prompt you through your choice(s) ■ Visit us online: **[website]** or ■ Mail the form below **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

✂

Mail-in Form

Leave Blank OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

❑ Do not share my personal information with nonaffiliates to market their products and services to me.

Name	
Address	
City, State, Zip	
[Account #]	

Mail to:
[Name of Financial Institution]
[Address1]
[Address2]
[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 4. Optional Mail-in Form.

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.
Name	
Address	
City, State, Zip	
[Account #]	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

BILLING CODE 4810–AM–C

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 1016.6 and 1016.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word ''customer'' may be replaced by the word ''member'' whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One.* The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table (''Reasons we can share your personal information'').

(5) ''To limit our sharing'' box, as needed, for the financial institution's opt-out information.

(6) ''Questions'' box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two.* The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions (''Who we are'' and ''What we do'').

(3) Definitions.

(4) ''Other important information'' box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as ''rev. [month/year]'' using either the name or number of the month, such as ''rev. July 2009'' or ''rev. 7/09''.

(b) *General instructions for the ''What?'' box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term ''Social Security number'' in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account

information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a ''Yes'' or ''No'' response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: ''Yes'' if it is required to or voluntarily provides an opt-out; ''No'' if it does not provide an opt-out; or ''We don't share'' if it answers ''No'' in the middle column. Only the sixth row (''For our affiliates to market to you'') may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§ 1016.14 and 1016.15 and with service providers pursuant to § 1016.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 1022, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§ 1016.7 and 1016.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word ''choice'' may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words ''toll-free'' before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the ''Yes'' responses in the third column of the disclosure table. In the part titled ''Please note,'' institutions may insert a number that is 30 or greater in the space marked ''[30].'' Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Institutions may include the words ''toll-free'' before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the ''To limit our sharing'' box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the ''Yes'' responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as ''[account #].'' Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the ''[account #]'' reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: ''If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. □ Apply my choice(s) only to me.'' The word ''choice'' may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word ''policy'' for ''account'' in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: ''□ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.''

(3) *FCRA section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: ''□ Do not allow your affiliates to use my personal information to market to me.''

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 1016.10(a) of this part, it must include in the mail-in opt-out form the following statement: ''□ Do not share my personal information with nonaffiliates to market their products and services to me.''

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: ''□ Do not share my personal information to market to me.'' *or* ''□ Do not use my personal information to market to me.'' A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: ''□ Do not share my personal information with other financial institutions to jointly market to me.''

(h) *Barcodes.* A financial institution may elect to include a barcode and/or ''tagline'' (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) *''Who is providing this notice?''* This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 1016.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in

the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the ''Other important information'' box, or, if that box is not included in the institution's form, directly following the ''Definitions.'' The list may appear in a multi-column format.

(2) *''How does [name of financial institution] protect my personal information?''* The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) *''How does [name of financial institution] collect my personal information?''* Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: ''We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.'' Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: ''We also collect your personal information from other companies.'' Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) *''Why can't I limit all sharing?''* Institutions that describe state privacy law provisions in the *''Other important information''* box must use the bracketed sentence: ''See below for more on your rights under state law.'' Other institutions must omit this sentence.

(5) *''What happens when I limit sharing for an account I hold jointly with someone else?''* Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: ''Your choices will apply to everyone on your account.'' or ''Your choices will apply to everyone on your account—unless you tell us otherwise.'' Financial institutions that provide insurance products or services and elect to use the model form may substitute the word ''policy'' for ''account'' in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 1016.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: ''*[name of financial institution] has no affiliates'';*

(ii) If it has affiliates but does not share personal information, state: ''*[name of financial institution] does not share with our affiliates*''; or

(iii) If it shares with its affiliates, state, as applicable: ''*Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].*''

(2) *Nonaffiliates.* As required by § 1016.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: ''*[name of financial institution] does not share with nonaffiliates so they can market to you*''; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: ''*Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].*''

(3) *Joint Marketing.* As required by § 1016.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: ''*[name of financial institution] doesn't jointly market*''; or

(ii) If it shares personal information for joint marketing, state, as applicable: ''*Our joint marketing partners include [list categories of companies such as credit card companies].*''

(c) *General instructions for the ''Other important information''* box. This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31729 Filed 12–20–11; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1281

RIN 2590–AA48

Federal Home Loan Bank Housing Goals: Mortgage Reporting Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is amending the mortgage reporting requirements in its regulation governing housing goals for the Federal Home Loan Banks (Banks) to make those requirements consistent with other data reporting requirements currently applicable to the Banks.

DATES: This rule is effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Associate Director, (202) 408–2537, or Rafe R. Ellison, Senior Program Analyst, (202) 408–2968, Office of Housing and Regulatory Policy, 1625 Eye Street NW., Washington, DC 20006. For legal matters, contact Kevin Sheehan, Assistant General Counsel, (202) 414–8952, or Sharon Like, Managing Associate General Counsel, (202) 414–8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552 (these are not toll-free numbers). The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Establishment of Bank Housing Goals

Section 1205 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 10C that requires the Director of FHFA to establish housing goals with respect to the Banks' purchase of mortgages, if any. To implement section 10C, FHFA adopted a final rule establishing three single-family owner-occupied purchase money mortgage goals and one single-family refinancing mortgage goal applicable to the Banks' purchases of single-family owner-occupied mortgages, if any, under their Acquired Member Assets (AMA) programs. *See* 75 FR 81096 (Dec. 27, 2010).

B. Bank Housing Goals Mortgage Reporting Requirements

The Bank housing goals regulation requires each Bank to collect and

compile computerized loan-level data on each AMA-approved mortgage purchased. *See* 12 CFR 1281.21(a). Each Bank is required to submit to the Director, on a semi-annual basis, a Mortgage Report containing aggregations of the loan-level mortgage data for year-to-date AMA-approved mortgage purchases, as well as year-to-date dollar volume, number of units, and number of AMA-approved mortgages on owner-occupied properties purchased that do, and do not, qualify under each housing goal. *See* 12 CFR 1281.21(b). The first semi-annual Mortgage Report must be submitted within 45 days of the end of the second quarter, and the annual Mortgage Report must be submitted within 60 days of the end of the calendar year. *See* 12 CFR 1281.21(c). In addition, the Bank housing goals regulation currently provides that a Bank may revise its first semi-annual Mortgage Report for a year at any time before submission of its annual Mortgage Report. *See* 12 CFR 1281.21(d).

C. Data Reporting Manual Requirements

FHFA has established separate data reporting requirements for the Banks under the Data Reporting Manual (DRM). The data reporting requirements under the Bank housing goals regulation are similar to existing data reporting requirements under the DRM, but the requirements are not identical. Specifically, the DRM provides that data that is required to be reported on a semi-annual basis must be submitted within two calendar months of the end of the second quarter, or within two calendar months of the end of the year, as applicable. In addition, the DRM requires that any corrections to data submitted by a Bank must be made within 30 days of identifying the need for a correction. This requirement effectively limits a Bank's ability to submit a revised semi-annual Mortgage Report pursuant to 12 CFR 1281.21(d).

II. Analysis of Final Rule

A. Timing of Mortgage Reports—§ 1281.21(c)

In order to make the mortgage reporting schedule for the Banks under the Bank housing goals consistent with the DRM reporting schedule, the final rule amends § 1281.21(c) to allow the Banks two calendar months, rather than 45 days, from the end of the second quarter to submit the semi-annual Mortgage Report, and two calendar months, rather than 60 days, from the end of the year to submit the annual Mortgage Report.

B. Revisions to Mortgage Reports—§ 1281.21(d)

In order to make the data integrity provisions under the Bank housing goals consistent with the data integrity requirements under the DRM, the final rule removes paragraph (d) from § 1281.21. This change does not impose any new requirements on the Banks. The change simply makes clear that the data integrity reporting requirements established under the DRM continue to apply to all data submissions from the Banks.

C. Banks' and Enterprises' Differences

Section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, 12 U.S.C. 4513(f), requires the Director of FHFA to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) whenever promulgating regulations that affect the Banks. The changes in this final rule are intended to conform the data reporting requirements under the Bank housing goals to the Bank data reporting requirements under the DRM. FHFA has considered these procedural changes in light of the differences between the Banks and the Enterprises and has determined that the final rule is appropriate.

III. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IV. Notice and Public Participation

FHFA has determined that this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act. Because the changes are procedural in nature and will not significantly affect a Bank's substantive rights, FHFA has concluded that notice and comment are not required pursuant to 5 U.S.C. 553(b)(A). In addition, because the changes to part 1281 are minor technical changes that conform regulatory provisions to the data reporting requirements that FHFA has already imposed on the Banks, FHFA for good cause has concluded that notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(B).

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply to regulations that are exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 604(a).

List of Subjects in 12 CFR Part 1281

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 1430c, FHFA amends part 1281 of title 12 of the Code of Federal Regulations as follows:

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

■ 1. The authority citation for part 1281 continues to read as follows:

Authority: 12 U.S.C. 1430c.

■ 2. Amend § 1281.21 as follows:
■ a. Revise paragraph (c); and
■ b. Remove paragraph (d) and redesignate paragraph (e) as new paragraph (d).

§ 1281.21 Mortgage Reports.

* * * * *

(c) *Timing of Reports.* Each Bank shall submit its first semi-annual Mortgage Report within two calendar months of the end of the second quarter. Each Bank shall submit its annual Mortgage Report within two calendar months of the end of the calendar year.

* * * * *

Dated: December 15, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–32644 Filed 12–20–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD; Amendment 39–16894; AD 2011–26–04]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines, Fuel Injected Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain fuel injected reciprocating engines manufactured by Lycoming Engines. That AD currently requires inspection, replacement if necessary, and proper clamping of externally

mounted fuel injector fuel lines. That AD also states that it is not applicable to engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection and replacement, if necessary, of externally mounted fuel injector lines. This new AD requires the same actions. This AD was prompted by Lycoming Engines revising their Mandatory Service Bulletin (MSB) to add engine models requiring inspections. We are issuing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

DATES: This AD is effective January 25, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 25, 2012.

ADDRESSES: For service information identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, or go to *www.lycoming.textron.com.* You may review copies of the referenced service information at the FAA, Engine Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7337; fax: (516) 794–5531; email: *Norman.perenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–14–07, Amendment 39–15602 (73 FR 39574, July 10, 2008). That AD applies to the specified products. The NPRM published in the **Federal Register** on February 15, 2011 (76 FR 8661). That NPRM proposed to inspect, replace if necessary, and properly clamp externally mounted fuel injector fuel lines. That AD also states that it is not applicable to engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection and replacement, if necessary, of externally mounted fuel injector lines.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Question

One commenter asked why the AD requirements are only for Lycoming engines, and not also for Teledyne Continental Motors (TCM) engines. The commenter inferred that we write ADs, just to make owners maintain their aircraft.

In response, any AD made applicable to TCM engines with externally mounted fuel injector lines, would have to be written by the Atlanta Aircraft Certification Office (ACO), because that office has oversight of TCM. The Atlanta ACO has informed us that at this time, there is insufficient data to justify an AD for TCM engines with externally mounted fuel injector lines, however, they realize there may be justification for issuing a Special Airworthiness Information Bulletin (SAIB), for TCM engines on this subject. They are looking into possibly issuing an SAIB.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 21,180 four-cylinder engines, 21,449 six-cylinder engines, and 256 eight-cylinder engines installed on aircraft of U.S. registry. We also estimate that it will take about 0.2 work-hour to inspect all lines on a four-cylinder engine, 0.5 work-hour to inspect all lines on a six-cylinder engine, and 0.7 work-hour to inspect all lines on an eight-cylinder engine. We also estimate that the average labor rate is $85 per work-hour. We do not anticipate any additional costs on U.S. operators, as the inspection would be done in conjunction with other work performed concurrently. We anticipate no parts to be required. Based on these figures, the total cost of the AD to U.S. operators for one inspection of the fleet is $1,286,875.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–14–07, Amendment 39–15602 (73 FR 39574, July 10, 2008), and adding the following new AD:

2011–26–04 Lycoming Engines (formerly Textron Lycoming Division, AVCO Corporation): Amendment 39–16894; Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 25, 2012.

(b) Affected ADs

This AD supersedes AD 2008–14–07, Amendment 39–15602 (73 FR 39574, July 10, 2008).

(c) Applicability

(1) This AD applies to fuel injected reciprocating engines manufactured by Lycoming Engines that incorporate externally mounted fuel injection lines (engines with an ''I'' in the prefix of the engine model designation) as listed in the following Table 1:

TABLE 1—ENGINE MODELS AFFECTED

Engine	Model
AEIO–320	–D1B, –D2B, –E1B, –E2B
AIO–320	–A1B, –BIB, –C1B
IO–320	–B1A, –B1C, –C1A, –D1A, –D1B, –E1A, –E1B, –E2A, –E2B
LIO–320	–B1A, –C1A
AEIO–360	–A1A, –A1B, –A1B6, –A1D, –A1E, –A1E6, –B1F, –B2F, –B1G6, –B1H, –B4A, –H1A, –H1B
AIO–360	–A1A, –A1B, –B1B
HIO–360	–A1A, –A1B, –B1A, –C1A, –C1B, –D1A, –E1AD, –E1BD, –F1AD, –G1A
IO–360	–A1A, –A1B, –A1B6, –A1B6D, –A1C, –A1D, –A1D6, –A2A, –A2B, –A3B6, –A3B6D, –B1B, –B1D, –B1E, –B1F, –B1G6, –B2F, –B2F6, –B4A, –C1A, –C1B, –C1C, –C1C6, –C1D6, –C1E6, –C1F, –C1G6, –F1A, –J1A6D, –M1B, –L2A, –M1A
IVO–360	–A1A
LIO–360	–C1E6, –M1A
TIO–360	–A1B, –C1A6D
IGO–480	–A1B6
AEIO–540	–D4A5, –D4B5, –D4D5, –L1B5, –L1B5D, –L1D5
IGO–540	–B1A, –B1C
IO–540	–A1A5, –AA1A5, –AA1B5, –AB1A5, –AC1A5, –AE1A5, –B1A5, –B1C5, –C1B5, –C4B5, –C4D5D, –D4A5, –E1A5, –E1B5, –G1A5, –G1B5, –G1C5, –G1D5, –G1E5, –G1F5, –J4A5, –V4A5D, –K1A5, –K1A5D, –K1B5, –K1C5, –K1D5, –K1E5, –K1E5D, –K1F5, K1H5, –K1J5, –K1F5D, –K1G5, –K1G5D, –K1H5, –K1J5D, –K1K5, –K1E5, –K1E5D, –K1F5, –K1J5, –L1C5, –M1A5, –M1B5D, –M1C5, –N1A5, –P1A5, –R1A5, –S1A5, –T4A5D, –T4B5, –T4B5D, –T4C5D, –V4A5, –V4A5D, –W1A5, –W1A5D, –W3A5D
IVO–540	–A1A
LTIO–540	–F2BD, –J2B, –J2BD, –N2BD, –R2AD, –U2A, –V2AD, –W2A
TIO–540	–A1A, –A1B, –A2A, –A2B, –A2C, –AE2A, –AH1A, –AA1AD, –AF1A, –AF1B, –AG1A, –AB1AD, –AB1BD, –AH1A, –AJ1A, –AK1A, –C1A, –E1A, –G1A, –F2BD, –J2B, –J2BD, –N2BD, –R2AD, –S1AD, –U2A, –V2AD, –W2A
TIVO–540	–A2A
IO–720	–A1A, –A1B, –D1B, –D1BD, –D1C, –D1CD, –B1B, –B1BD, –C1B

(2) Engine models in Table 1 of this AD are installed on, but not limited to, Piper PA–24 Comanche, PA–30 and PA–39 Twin Comanche, PA–28 Arrow, and PA–23 Aztec; Beech 23 Musketeer; Mooney 20, and Cessna 177 Cardinal airplanes.

(3) This AD is not applicable to engines having internally mounted fuel injection lines, which are not accessible. Those engine models are not included in Table 1 of this AD.

(4) This AD is not applicable to engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection of externally mounted fuel injector lines. Those engine models are not included in Table 1 of this AD.

(d) Unsafe Condition

This AD was prompted by Lycoming Engines revising their Mandatory Service Bulletin (MSB) to add engine models requiring inspection. We are issuing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) Engines That Have Had Initial Inspections

For engines that have had initial inspections in accordance with Textron Lycoming MSB No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992; Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001; Lycoming Engines MSB No. 342E, dated May 18, 2004, or Lycoming Engines MSB 342F, dated June 4, 2010, inspect in accordance with paragraph (h) of this AD.

(g) Engines That Have Not Had Initial Inspections

For engines that have not had initial inspections previously done in accordance with Textron Lycoming MSB No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992; Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001; Lycoming Engines MSB No. 342E, dated May 18, 2004, or Lycoming Engines MSB 342F, dated June 4, 2010, inspect as follows:

(1) For engines that have not yet had any fuel line maintenance done, or have not had any fuel line maintenance done since new or since the last overhaul, inspect in accordance with paragraph (i) of this AD within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) For all other engines, inspect in accordance with paragraph (i) of this AD within 10 hours TIS after the effective date of this AD.

(h) Repetitive Inspections

Thereafter, inspect at intervals of 100 hours TIS (not to exceed 110 hours), at each engine overhaul, and after any maintenance has been done on the engine where any clamp (or clamps) on a fuel injector line (or lines) has

been disconnected, moved, or loosened, in accordance with paragraph (i) of this AD.

(i) Inspection Criteria

Inspect the fuel injector fuel lines and clamps between the fuel manifold and the fuel injector nozzles, and replace as necessary any fuel injector fuel line and clamp that does not meet all conditions specified in Lycoming Engines MSB No. 342F, dated June 4, 2010.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19. AMOCs approved previously in accordance with AD 2008–14–07, Amendment 39–15602, are approved as AMOCs for the corresponding requirements in paragraph (h) of this AD.

(k) Related Information

(1) For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7337; fax: (516) 794–5531; email: *Norman.perenson@faa.gov.*

(2) FAA Special Airworthiness Information Bulletin No. NE–07–49, dated September 20, 2007, is not mandatory, but has additional information on this subject.

(l) Material Incorporated by Reference

(1) You must use Lycoming Engines Mandatory Service Bulletin No. 342F, dated June 4, 2010, to perform the actions required by this AD.

(2) The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, or go to www.lycoming.textron.com for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on December 5, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–32467 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

■ In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2011, on page 704, in Supplement No. 1 of Part 774, ECCN 1E001 is amended by removing the first entry in the table under *Reasons for control* for NS Column 1 and adding an entry following the remaining NS Column 1 entry that reads ''NS applies to ''technology'' for items controlled by 1A004.....NS Column 2''.

[FR Doc. 2011–32747 Filed 12–20–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 110822526–1715–02]

RIN 0691–AA80

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2012 BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The BE–12 survey is conducted every five years; the prior survey covered 2007. The benchmark survey covers the universe of foreign direct investment in the United States, and is BEA's most detailed survey of such investment. For the 2012 benchmark survey, BEA is changing reporting thresholds and data items collected, as well as changing the names and design of the survey forms. The changes are intended to align the data collection program for multinational companies with available resources and align the statistics on multinational companies with recent changes in financial accounting standards and international statistical standards.

DATES: This final rule will be effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *David.Galler@bea.gov* or phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: On September 21, 2011, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States (76 FR 58420–58424). No comments on the proposed rule were received. Thus the proposed rule is adopted without change. This final rule amends 15 CFR 806.17 to set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

The BEA conducts the BE–12 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 3103(b) of the Act provides that ''with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter.''

The benchmark survey covers the universe of foreign direct investment in the United States in terms of value, and is BEA's most detailed survey of such investment. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of ten percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates, and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they serve as benchmarks for

the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

BEA will make the survey available via eFile, BEA's electronic filing system, in March 2012, for the convenience of respondents who may wish to file as soon as their 2012 fiscal year ends. BEA will send printed survey forms to potential respondents in March 2013; responses will be due by May 31.

Description of Changes

The changes revise the regulations and the survey forms for the BE–12 benchmark survey. These amendments include changes in reporting thresholds and data items collected, as well as changes in the names and design of the survey forms. Several of these amendments are part of a larger program to align the data collection program for multinational companies with available resources.

Under the revised regulations, U.S. affiliates report their information, regardless of industry, on one of four forms—BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing. Data on U.S. affiliates that are banks, bank holding companies, or financial holding companies are collected on the same survey forms as data on other U.S. affiliates.

The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales or gross operating revenue, and net income. The reporting requirements for the four forms are—

(a) Form BE–12(A)—Report for majority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than $300 million, positive or negative.

(b) Form BE–12B—Report for majority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater then $60 million, positive or negative, but not greater than $300 million, positive or negative, and minority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than $60 million, positive or negative.

(c) Form BE–12(C)—Report for U.S. affiliates with total assets, sales or gross operating revenues, or net income less than or equal to $60 million, positive or negative. The smallest U.S. affiliates—those with total assets, sales or gross operating revenues, or net income less than or equal to $20 million, positive or negative—file only a few items on Form BE–12(C).

(d) Form BE–12 Claim for Not Filing—Report to be filed by U.S. persons who are not subject to the reporting requirements for the BE–12 benchmark survey, but have been contacted by BEA concerning their reporting status.

In addition to the changes in the reporting criteria, BEA hereby adds and deletes some items on one of the benchmark survey forms. The following items are added to Form BE–12A (no additions are made to the other BE–12 forms):

(1) Questions are added regarding the use of fair value accounting on the balance sheet. Companies that indicate that they used fair value accounting are asked to provide the amount of: net property, plant, and equipment; of total assets; and of total liabilities recorded at fair value.

(2) Questions are added to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities.

(3) Several check-box questions are added asking whether U.S. affiliates purchased contract manufacturing services from others or performed contract manufacturing services for others. They are also asked whether they owned the materials used in contract manufacturing and if the company that performed or purchased the service was located in the United States or abroad.

(4) A question is added asking if the U.S. affiliate has equity in its foreign parent(s) (reverse investment). An item is added to collect voting percentage, equity percentage, and the dollar amount of the investment.

(5) Several check-box questions are added to ensure that certain types of finance companies do not report intercompany debt to BEA that is already reported on Treasury International Capital surveys.

BEA also eliminates the following items from the benchmark survey: selected balance sheet items (BE–12A); the breakdown of sales of services to foreign persons into sales of services to the foreign parent group, to foreign affiliates owned by the affiliate, and to other foreign persons (BE–12A); the breakdown of employment and employee compensation by occupational classification (BE–12A, BE–12B); the breakdown of total employee compensation into wages and salaries and employee benefit plans (BE–12A); data on the composition of external finances (BE–12A); manufacturing employment by state (BE–12A, BE–12B); gross property, plant, and equipment by state (BE–12A, BE–12B); commercial property by state (BE–12A, BE–12B); the location of the primary U.S. headquarters of the U.S. affiliate (BE–12A, BE–12B, BE–12C); number of employees covered by collective bargaining agreements (BE–12A); acres of U.S. land owned (BE–12A, BE–12B, BE–12C); basis (shipped or charged) for trade data (check-box questions) (BE–12A); exports/imports shipped to/by foreign affiliates owned by U.S. affiliate by country of origin/destination (as in the benchmark surveys for 2002 and earlier years, these columns will be combined with the columns ''shipped to/by all other foreign persons;'' BE–12A); and withholding taxes on intercompany interest payments and interest receipts (BE–12A).

In addition, BEA renames and redesigns the survey forms. The new design incorporates improvements made to other BEA surveys. Survey instructions and data item descriptions are changed to improve clarity, make the benchmark survey forms more consistent with those of other BEA surveys, and provide updated information on accounting standards.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB approved the information collection under OMB control number 0608–0042.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE–12 survey is expected to result in the filing of reports from approximately 19,950 U.S. affiliates. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 9.7 hours per response, including time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 194,150 hours, compared to 209,650 hours for the previous (2007) benchmark survey. The decrease in burden hours is due to a reduction in the number of data items on the form which reduces the average burden per form, and increased reporting thresholds which allow more respondents to file on shorter forms.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via email at *David.Galler@bea.gov* or by FAX at (202) 606–2894, and to OMB, O.I.R.A., Paperwork Reduction Project 0608–0042, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov* or by FAX at (202) 395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified at the proposed rule stage to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule more generally. No final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: November 28, 2011.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2012.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2012. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2012, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person is not a U.S. affiliate of a foreign person and not subject to the reporting requirements of the BE–12 survey;

(2) Completing and returning the ''BE–12 Claim for Not Filing'' by the due date of the survey; or

(3) Filing the properly completed BE–12 report—Form BE–12A, Form BE–12B, or Form BE–12C—by May 31, 2013.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2012. A BE–12 report is required even if the foreign person's ownership interest in the U.S. business enterprise was established or acquired during the 2012 reporting year.

(c) *Forms to be filed.* (1) Form BE–12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent's share), was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE–12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) but none of these items was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(ii) A minority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012. (A ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.)

(3) Form BE–12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(4) BE–12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2013.

[FR Doc. 2011–32461 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–06–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA74

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Correcting amendments.

SUMMARY: The Commission is issuing technical corrections to the Appliance Labeling Rule (16 CFR part 305). These corrections are necessary to ensure that amendatory language published on July 19, 2010 (75 FR 41696) and scheduled to become effective on January 1, 2012 is consistent with recently codified Rule amendments.

DATES: Effective January 1, 2012.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Over the last two years, the Commission has issued amendments to its Appliance Labeling Rule (16 CFR part 305) in two separate **Federal Register** Notices involving: (1) Light bulbs (75 FR 41696 (July 19, 2010)), and (2) television labels (76 FR 1038 (Jan. 6, 2011)). The effective dates of these two final rules differ. The television label amendments, published on January 6, 2011, became effective on May 10, 2011 while the earlier light bulbs amendments will not become effective until January 1, 2012.[1] As a result, two amendatory instructions in the earlier light bulb notice are not consistent with the Rule's current language as amended by the television Notice. In a separate notice, the Commission has issued a correction removing the obsolete instructions from the July 19, 2010 notice. Now, the Commission revises the Rule's language to ensure its accuracy. In doing so, the Commission is also correcting an inadvertent error in the definition of ''incandescent lamp.'' [2] Otherwise, the corrections in this Notice contain no substantive changes to the previously announced Rule amendments.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Federal Trade Commission amends 16 CFR part 305 as follows:

PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, paragraphs (l) and (m) are revised, paragraphs (n), (o), (p), (q), (r), (s), (t), and (u) are redesignated as (r), (s), (t), (u), (v), (w), (x), and (y) respectively, and new paragraphs (n), (o), (p), and (q) are added to read as follows:

§ 305.3 Description of covered products.

* * * * *

(l) *General service lamp* means:

(1) A lamp that is:

(i) A medium base compact fluorescent lamp;

(ii) A general service incandescent lamp;

(iii) A general service light-emitting diode (LED or OLED) lamp; or

(iv) Any other lamp that the Secretary of Energy determines is used to satisfy lighting applications traditionally served by general service incandescent lamps.

(2) Exclusions. The term *general service lamp* does not include—

(i) Any lighting application or bulb shape described in paragraphs (n)(3)(ii)(A) through (T) of this section; and

(ii) Any general service fluorescent lamp.

(m) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is:

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in paragraph (n)(3)(ii) of this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section and that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

(n) *Incandescent lamp:*

(1) Means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types;

(3) *General service incandescent lamp* means:

[1] Though the July 19, 2010 notice set the effective date as July 19, 2011, the Commission subsequently changed that date to January 1, 2012. *See* 76 FR 20233 (April 12, 2011).

[2] The definition of ''incandescent lamp'' in the published **Federal Register** Notice contained an inadvertent error stating that the diameter of covered reflector lamps exceeds ''2.75 inches'' (§ 305.3(n)(1)(ii)). The correct number, consistent with the underlying statute, is ''2.25 inches.'' See 42 U.S.C. 6291(30)(C); and 75 FR at 41699, n. 18, and 41713.

(i) In general, a standard incandescent, halogen, or reflector type lamp that—

(A) Is intended for general service applications;

(B) Has a medium screw base;

(C) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(D) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(ii) *Exclusions.* The term ''general service incandescent lamp'' does not include the following incandescent lamps:

(A) An appliance lamp as defined at 42 U.S.C. 6291(30);

(B) A black light lamp;

(C) A bug lamp;

(D) A colored lamp as defined at 42 U.S.C. 6291(30);

(E) An infrared lamp;

(F) A left hand thread lamp;

(G) A marine lamp;

(H) A marine signal service lamp;

(I) A mine service lamp;

(J) A plant light lamp;

(K) A rough service lamp as defined at 42 U.S.C. 6291(30);

(L) A shatter resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);

(M) A sign service lamp;

(N) A silver bowl lamp;

(O) A showcase lamp;

(P) A traffic signal lamp;

(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);

(R) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) with a diameter of 5 inches or more;

(S) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; or

(T) A B, BA, CA, F, G16–1/2, G–25, G–30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less.

(4) *Incandescent reflector lamp* means a lamp described in paragraph (n)(1)(ii) of this section; and

(5) *Tungsten halogen lamp* means a gas filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(o) *Light emitting diode (LED)* means a p n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device. The output of a light emitting diode may be in B

(1) The infrared region;

(2) The visible region; or

(3) The ultraviolet region.

(p) *Organic light emitting diode (OLED)* means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

(q) *General service light-emitting diode (LED or OLED)* lamp means any light emitting diode (LED or OLED) lamp that:

(1) Is a consumer product;

(2) Is intended for general service applications;

(3) Has a medium screw base;

(4) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(5) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

* * * * *

■ 3. Amend Appendix L as follows:

■ a. Add Prototype Labels 5, 6, and 7 after Prototype Label 4;

■ b. Remove all sections labeled ''Lamp Packaging Disclosures'';

■ c. Redesignate Sample Labels 10, 11, 12, and Sample Icon 13 as Sample Labels 14, 15, 16, and Sample Icon 17 respectively; and

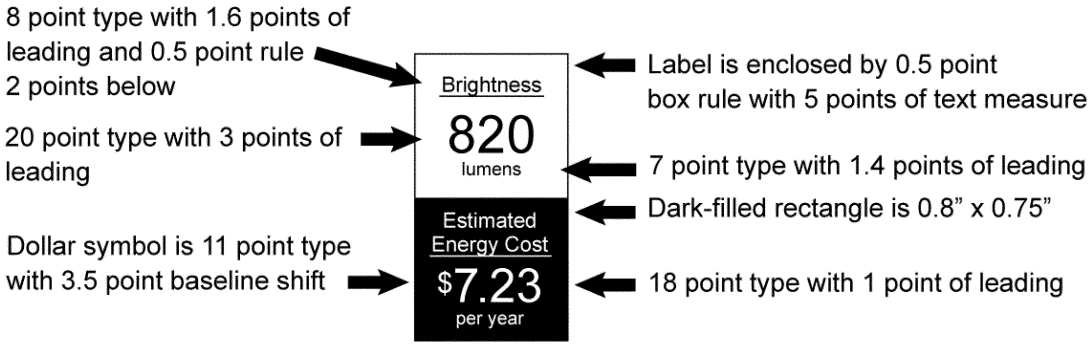
■ d. Add Sample Labels 10, 11, 12, and 13 after Sample Label 9 as follows:

Appendix L to Part 305—Sample Labels

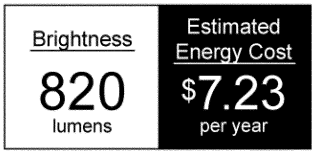
* * * * *

BILLING CODE P

* Typeface is Arial or equivalent type style. Type is black or one color printed on a white or other neutral contrasting background.



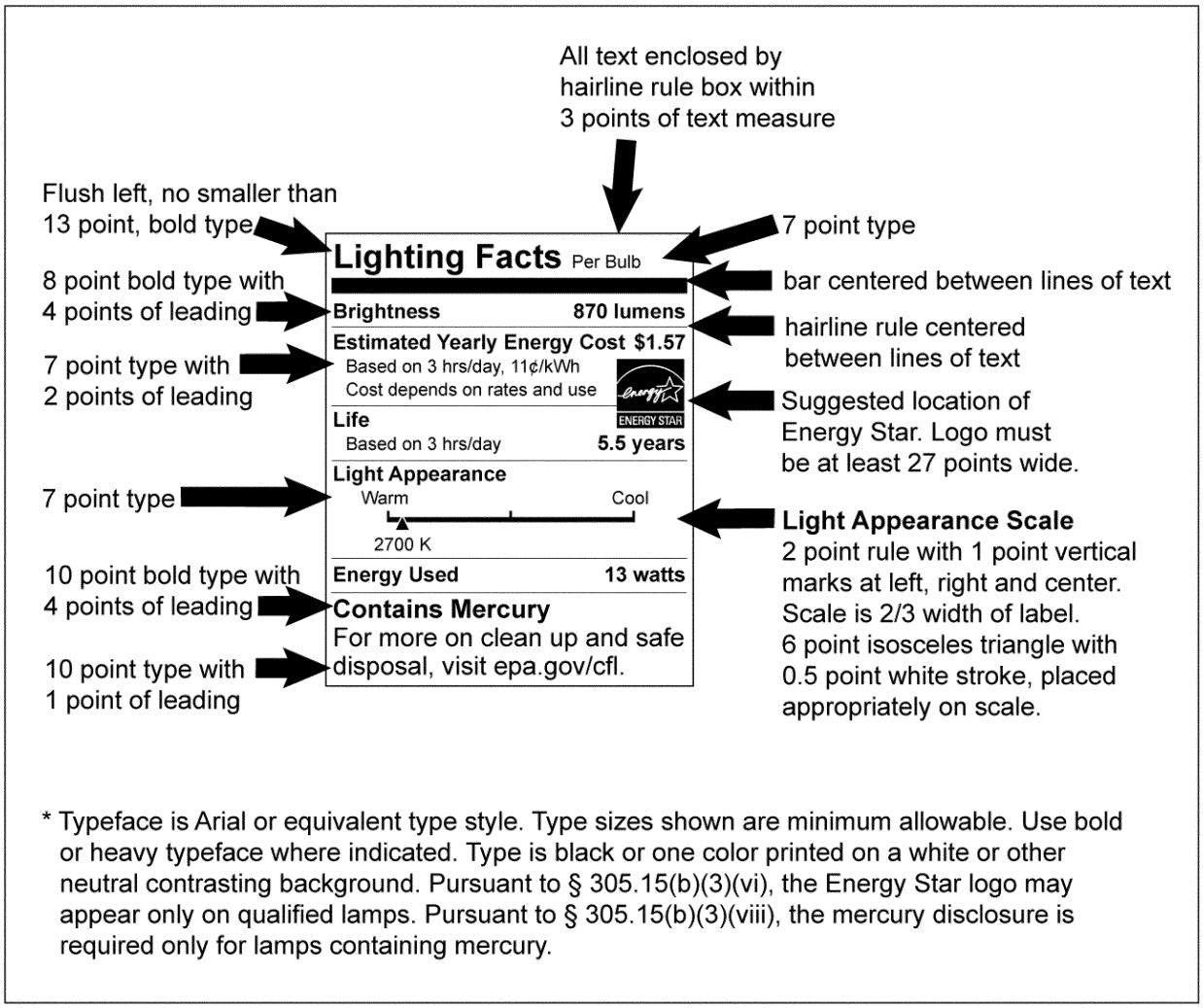
* Minimum size for vertical label is 0.8" x 1.5". Scale label and all text proportionally.



* Minimum size for vertical label is 1.6" x 0.75". Scale label and all text proportionally.

PROTOTYPE LABEL 5

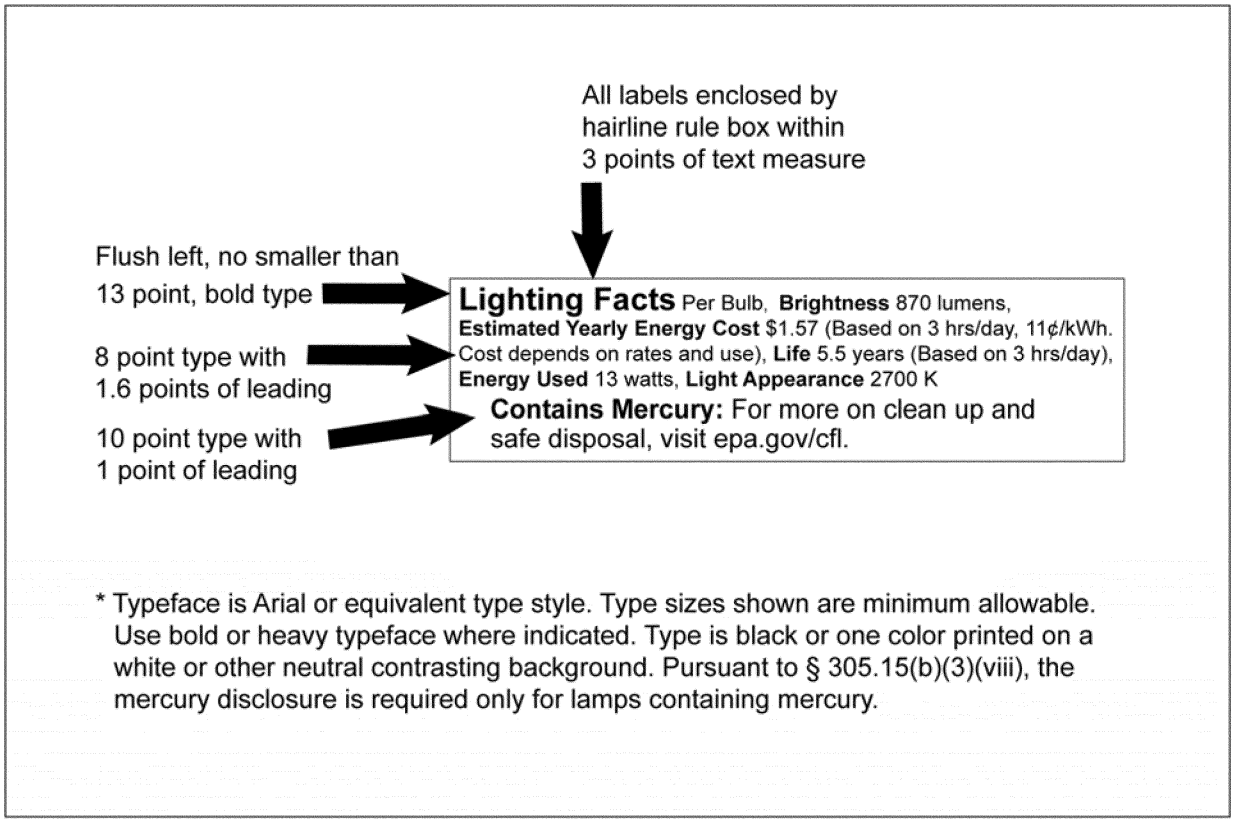
FRONT PACKAGE DISCLOSURE FOR GENERAL SERVICE LAMPS



* Typeface is Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black or one color printed on a white or other neutral contrasting background. Pursuant to § 305.15(b)(3)(vi), the Energy Star logo may appear only on qualified lamps. Pursuant to § 305.15(b)(3)(viii), the mercury disclosure is required only for lamps containing mercury.

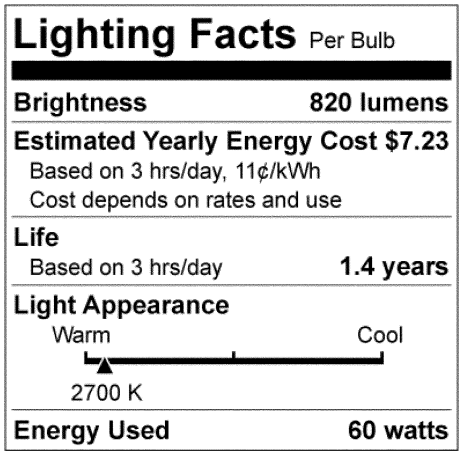
PROTOTYPE LABEL 6

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMPS (STANDARD FORMAT)



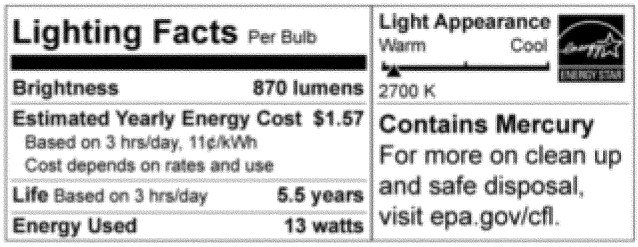
PROTOTYPE LABEL 7

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMPS CONTAINING MERCURY (LINEAR FORMAT)



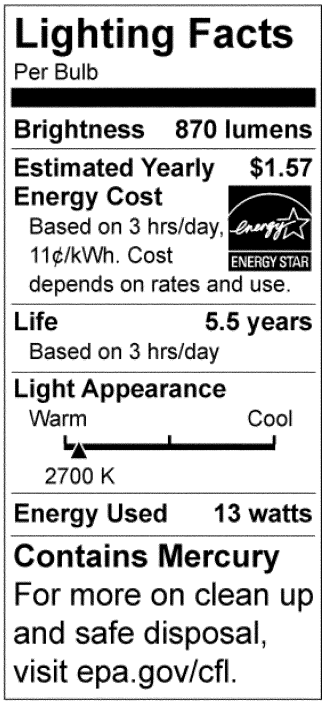
SAMPLE LABEL 10

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP NOT CONTAINING MERCURY



SAMPLE LABEL 11

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (WIDE ORIENTATION)



SAMPLE LABEL 12

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (TALL ORIENTATION)



SAMPLE LABEL 13

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (BILINGUAL EXAMPLE)

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 2011–32261 Filed 12–20–11; 8:45 am]

BILLING CODE C

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA74

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule; Correction.

SUMMARY: The Commission published a final rule on July 19, 2010 (75 FR 41696), adopting amendments to the Appliance Labeling Rule, 16 CFR part 305 (''Rule'') related to light bulb labeling. This document makes technical corrections to the final rule.

DATES: Effective December 21, 2011.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Over the last two years, the Commission has issued amendments to its Appliance Labeling Rule (16 CFR part 305) in two separate **Federal Register** Notices involving: (1) Light bulbs (75 FR 41696 (July 19, 2010)), and (2) television labels (76 FR 1038 (Jan. 6, 2011)). The effective dates of these two final rules differ. The television label amendments, published on January 6, 2011, became effective on May 10, 2011, while the earlier light bulb amendments will not become effective until January 1, 2012.[1] As a result, two amendatory instructions in the light bulb notice are not consistent with current Rule provisions. This notice removes those two instructions. The Commission is also issuing a separate technical correction notice to replace these instructions with revised rule language.

In FR Doc. 2010–16895 appearing on pages 41713 and 41717 in the **Federal Register** on July 19, 2010, the following corrections are made:

§ 305.3 [Corrected]

■ 1. On page 41713, in the second and third columns, and page 41714, in the first column, instruction 2 and the amendments to § 305.3 are removed.

Appendix L to Part 305 [Corrected]

■ 2. On page 41717, in the third column, and pages 41718 through 41724, instruction 10 and the amendments to Appendix L to Part 305 is removed.

Donald S. Clark,

Secretary.

[FR Doc. 2011–32271 Filed 12–20–11; 8:45 am]

BILLING CODE P

[1] Though the July 19, 2010 notice set the effective date as July 19, 2011, the Commission subsequently changed that date to January 1, 2012. *See* 76 FR 20233 (April 12, 2011).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA–2011–N–0003]

New Animal Drugs; Change of Sponsor; Zinc Gluconate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for zinc gluconate injectable solution from Technology Transfer, Inc., to Ark Sciences, Inc.

DATES: This rule is effective December 21, 2011.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, (240) 276–8300, email: *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Technology Transfer, Inc., 33 East Broadway, suite 190, Columbia, MO 65203 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–217 for NEUTERSOL (zinc gluconate) Injectable Solution to Ark Sciences, Inc., 1101 East 33rd St., suite B304, Baltimore, MD 21218. Accordingly, the Agency is amending the regulations in 21 CFR 522.2690 to reflect the transfer of ownership.

Following this change of sponsorship, Technology Transfer, Inc., is no longer the sponsor of an approved application. Accordingly, § 510.600 (21 CFR 510.600) is being amended to remove the entries for this firm.

In addition, Ark Sciences, Inc., is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, § 510.600 is being amended to add entries for this sponsor.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Technology Transfer, Inc.''; alphabetically add a new entry for ''Ark Sciences, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''067647''; and in numerical sequence add a new entry for ''076175'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ark Sciences, Inc., 1101 East 33rd St., suite B304, Baltimore, MD 21218	076175
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
076175	Ark Sciences, Inc., 1101 East 33rd St., suite B304, Baltimore, MD 21218.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2690 [Amended]

■ 4. In paragraph (b) of § 522.2690, remove ''067647'' and in its place add ''076175''.

Dated: December 8, 2011.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2011–32591 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2011–N–0003]

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA revises a manufacturing specification for monensin free-choice Type C medicated feed for growing cattle on pasture or in dry lot.

DATES: This rule is effective December 21, 2011.

FOR FURTHER INFORMATION CONTACT: Matthew A. Lucia, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8116, email: *matthew.lucia@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 95–735 that provides for use of RUMENSIN 90 (monensin, USP) Type A medicated article in a free-choice Type C medicated feed for growing cattle on pasture or in dry lot (stocker and feeder cattle and dairy and beef replacement heifers). The supplement revises the percent monensin Type A medicated article in the codified free-choice feed specifications to reflect use of a product containing 90.7 grams of monensin per pound. The supplemental NADA is approved as of May 24, 2011, and the regulations in 21 CFR 558.355 are amended to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The Agency has determined under 21 CFR 25.33 that this action is of a type

that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.355, revise paragraph (f)(3)(x) introductory text and paragraph (f)(3)(x)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(x) *Amount per ton.* 1,620 grams monensin, USP.

* * * * *

(*b*) *Specifications.* Use as free-choice Type C medicated feed formulated as mineral granules as follows:

Ingredient	Percent	International feed No.
Monocalcium phosphate (21% phosphorus, 15% calcium)	29.49	6–01–082
Sodium chloride (salt)	24.37	6–04–152
Dried cane molasses	20.0	4–04–695
Ground limestone (33% calcium) or calcium carbonate (38% calcium)	13.75	6–02–632
Cane molasses	3.0	4–04–696
Processed grain by-products (as approved by AAFCO)	5.0	
Vitamin/trace mineral premix [1]	2.5	
Monensin Type A article, 90.7 grams per pound	0.89	
Antidusting oil	1.0	

[1] Content of the vitamin/trace mineral premix may be varied. However, they should be comparable to those used for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium and ethylenediamine dihydroiodide (EDDI) must comply with the published requirements. (For selenium see 21 CFR 573.920; for EDDI see 51 FR 11483 (April 3, 1986).)

* * * * *

Dated: December 9, 2011.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2011–32427 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Equal Employment Opportunity Commission

29 CFR Part 1602

Recordkeeping and Reporting Requirements Under Title VII, the ADA and GINA

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 900 to 1899, revised as of July 1, 2011, in Part 1602, remove the words ''section 709(c) of title VII or section 107 of the ADA'' and add in their place the words ''section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA'' wherever they appear in the following sections:

Section	Page No.
§ 1602.11	175
§ 1602.12	175
§ 1602.19	177
§ 1602.26	179
§ 1602.37	181
§ 1602.45	184
§ 1602.54	186

[FR Doc. 2011–32746 Filed 12–20–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1099]

Drawbridge Operation Regulations; Annisquam River and Blynman Canal, Gloucester, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR127 Bridge at mile 0.0 across the Annisquam River and Blynman Canal. The deviation is necessary to facilitate bridge rehabilitation repairs. This deviation allows the bridge to remain in the closed position for 31 days.

DATES: This deviation is effective from December 19, 2011 through January 18, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1099 and are available online at *www.regulations.gov,* inserting USCG–2011–1099 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John McDonald, Project Officer, First Coast Guard District, *john.w.mcdonald@uscg.mil,* or telephone (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The SR127 Bridge, across the Annisquam River/Blynman Canal, mile 0.0, at Gloucester, Massachusetts, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.586.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the regulations to

facilitate bridge rehabilitation repairs, replacement of deck purlins on the bascule spans.

Under this temporary deviation the SR127 Bridge may remain in the closed position from December 19, 2011 through January 18, 2012.

A work platform will be located under the bascule spans across the navigable channel reducing vertical clearance under the bridge by six feet. The work platform will in place during working hours, 6:30 a.m. through 4 p.m., Monday through Friday. The platform shall be removed upon request by calling the bridge at (978) 283–0243 or by marine radio on VHF FM channel 13 and 16. On weekends and during non-working hours the platform shall be removed. Vessels that can pass under the draw in the closed position may do so on weekends and non-working hours.

The Gloucester Harbor Master and the local marinas were notified and no objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 12, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–32626 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1082]

Drawbridge Operation Regulation; Escatawpa River, Moss Point, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Mississippi Export Railroad Company swing bridge across the Escatawpa River, mile 3.0, at Moss Point, Jackson County, Mississippi. This deviation is necessary to replace the cracked center housing and other repair work needed. This deviation allows the bridge to remain in the closed-to-navigation position during 3 days in January.

DATES: This deviation is effective from 6 a.m. on Tuesday, January 3, 2012 through 11 p.m. on Thursday, January 5, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1082 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1082 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Donna Gagliano, Bridge Administration Branch, Coast Guard; telephone (504) 671–2128 or email *Donna.Gagliano@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Mississippi Export Railroad Company has requested a temporary deviation from the operating schedule for the swing span bridge across Escatawpa River, mile 3.0, at Moss Point, Jackson County, Mississippi. The swing span bridge has a horizontal clearance of 69 feet and a vertical clearance of 6 feet above mean high water (based on the National Geodatic Vertical Datum of 1929) in the closed-to-navigation position.

In accordance with 33 CFR 117.5, except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart. This deviation allows the swing span of the bridge to remain in the closed-to-navigation position beginning at 6 a.m. on Tuesday, January 3 through 11 p.m. Thursday, January 5, 2012 with no openings.

The closure is necessary to perform the work continuously in replacing the cracked center housing and other repair work. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of commercial tugs with tows, fishing vessels, and other recreational crafts. There is only one company that transits above the bridge. Based on experience and coordination with waterway users, it has been determined that this closures will not have a significant effect on vessels that use the waterway. The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. There are no alternate routes. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.5(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 21, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–32629 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1018]

Drawbridge Operation Regulation; Upper Mississippi River, Clinton, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Clinton Railroad Drawbridge across the Upper Mississippi River, mile 518.0, at Clinton, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

DATES: This deviation is effective from 12:01 a.m., January 2, 2012 to 9 a.m. March 2, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1018 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1018 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation for the Clinton Railroad Drawbridge, across the Upper Mississippi River, mile 518.0, at Clinton, Iowa to open on signal if at least 24 hours advance notice is given for 61 days from 12:01 a.m., January 2, 2012 to 9 a.m., March 2, 2012 to allow the bridge owner time for preventive maintenance. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridge shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 16 (Mile 457.2 UMR), Lock No. 17 (Mile 437.1 UMR) and Lock No. 18 (Mile 410.5 UMR) until 4:30 p.m., March 2, 2012 will preclude any significant navigation demands for the drawspan opening.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 21, 2011.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2011–32636 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1130]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow community celebration of New Year's Eve. This deviation allows the bridge to remain in the closed-to-navigation position during a portion of the event.

DATES: This deviation is effective from 9 p.m. to 9:20 p.m. on December 31, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1130 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1130 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 9 p.m. to 9:20 p.m. on December 31, 2011 to allow community celebration of New Year's Eve. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 7, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard.

[FR Doc. 2011–32643 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN49

Payment or Reimbursement for Emergency Treatment Furnished by Non-VA Providers in Non-VA Facilities to Certain Veterans With Service-Connected or Nonservice-Connected Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning emergency hospital care and medical services provided to eligible veterans at non-VA facilities. The amendments are required by section 402 of the Veterans' Mental Health and Other Care Improvements Act of 2008. Among other things, the amendments authorize VA to pay for emergency treatment provided to a veteran at a non-VA facility up to the time the veteran can be safely transferred to a VA or other Federal facility and such facility is capable of accepting the transfer, or until such transfer was actually accepted, so long as the non-VA facility made and documented reasonable attempts to transfer the veteran to a VA or other Federal facility.

DATES: *Effective Date:* This final rule is effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa Brown, Chief Policy Management Department, Department of Veterans Affairs, 3773 Cherry Creek North Drive, Suite 450, Denver, CO 80209, (303) 331–7829. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Sections 1725 and 1728 of title 38, United States Code, authorize the Secretary of Veterans Affairs to reimburse eligible veterans for costs related to non-VA emergency treatment furnished at non-VA facilities, or to pay providers directly for such costs. Specifically, section 1725 authorizes reimbursement for emergency treatment for eligible veterans with nonservice-connected conditions, and section 1728 authorizes reimbursement for emergency treatment for eligible veterans with service-connected conditions. These statutory provisions are implemented at 38 CFR 17.1000 through 17.1008 for eligible veterans with nonservice-connected conditions, and at 38 CFR 17.120 and 17.121 for eligible veterans with service-connected conditions.

As explained in a notice of proposed rulemaking published on June 11, 2010 (75 FR 33216), prior to recent amendments to the law, VA was not authorized to reimburse or pay for treatment provided after ''the veteran c[ould] be transferred safely to a [VA] facility or other Federal facility'' under 38 U.S.C. 1725(f)(1)(C) (2007). Thus, under 38 U.S.C. 1725 and pursuant to regulations implementing 38 U.S.C. 1728, VA was unable to provide payment to the veteran or medical provider for services rendered beyond the point the veteran was determined to be stable enough for transfer, even if no VA or other Federal facility could immediately accept the transfer and the veteran required continued, non-emergency treatment.

On October 10, 2008, the Veterans' Mental Health and Other Care Improvements Act of 2008, Public Law 110–387, was enacted, and it made several amendments to our authority to reimburse for the cost of non-VA emergency care.

Section 402 of Public Law 110–387 amended the definition of ''emergency treatment'' in section1725(f)(1), extending VA's payment authority until ''such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer,'' or until such transfer was accepted, so long as the non-VA facility ''made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility.'' This amendment extended our authority to pay for treatment post-stabilization.

Section 402(a)(1) amended section 1725(a)(1) by striking the term ''may reimburse'' and inserting ''shall reimburse'' in its place. This amendment requires VA to reimburse the covered costs for emergency care received at non-VA facilities for eligible veterans, rather than leaving the decision to make such reimbursement at the discretion of the Secretary.

Section 402(b) of Public Law 110–387 amended 38 U.S.C. 1728. First, section 402(b)(1) authorized VA to reimburse or pay for ''customary and usual charges of emergency treatment'' when a veteran makes payment directly to a non-VA provider of emergency care. The statute had previously authorized reimbursement for ''the reasonable value of such care or services.'' This amendment relates to the amount of payment and is the subject of another rulemaking, RIN 2900–AN37, ''Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated with Non-VA Outpatient Care''. 75 FR 7218 (Feb. 18, 2010).

Second, section 402(b)(3) made the definition of ''emergency treatment'' in section 1725(f)(1) applicable to section 1728. As described above, that definition of emergency treatment now includes care or services furnished until ''such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer,'' or until such transfer was accepted, so long as the non-VA facility ''made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility.''

In the proposed rule published on June 11, 2010 (75 FR 33216), we proposed to amend the following VA regulations to comply with the amendments made to 38 U.S.C. 1725 and 1728, and make technical changes such as correcting grammatical errors and updating obsolete regulatory citations: 38 CFR 17.120, 17.121, 17.1002, 17.1005, 17.1006, and 17.1008.

We received four comments on the proposed rule. One commenter fully supported the rule because it will improve veterans' ability to obtain emergency care from non-VA facilities. The remainder of the comments are addressed below.

One commenter was concerned with our decision in §§ 17.121(a) and 17.1006 to assign a ''designated VA clinician'' with the task of determining whether treatment should be reimbursed, specifically asserting that VA should place this responsibility in more highly skilled and trained employees. We disagree with this comment, and make no changes to the rule, because this portion of the rule simply adopts customary practice as implemented in the health care industry. The common industry practice is to utilize the services of health care professionals, such as nurses, for purposes of clinical review. Further, we believe that this designation of responsibility will promote greater efficiency in the use of VA physician services. VA employs highly trained clinical staff that is capable of making a clinical determination as to whether emergency care meets the requirements set forth under this rule, and whether a veteran can be safely transferred from the non-VA facility.

We received three comments related to the transfer of veterans from non-VA hospitals. The commenters questioned whether VA was giving enough deference to the treating physician at the non-VA facility to determine when the veteran is stable enough to be transferred to a VA facility. A veteran may not be transferred from a non-VA facility to a VA facility before such veteran has first been released by the physician of the treating facility, and only after such physician determines the veteran has been stabilized. We note that this rule governs the payment for emergency services only, and VA's review of an episode of care for the purposes of determining eligibility for payment is retroactive, meaning the emergency care has already been provided. In reviewing the episode of care for payment purposes, VA will consider the treating physician's assessment of when the veteran returned to a stable condition and could have been transferred to a VA or other Federal facility. Although the procedure for transferring a VA-enrolled patient from a non-VA facility to a VA facility is not governed by this rule, we note that VA's practice is to work with the treating non-VA clinicians to determine when transfer would be safe. If the veteran's stability for transfer is questionable, the designated VA clinician will consult with the attending non-VA physician to determine whether transfer is in the best interest of the veteran. At no time during an episode of care will VA challenge the discretion of the treating non-VA physician with regard to whether an emergency situation has ended. We make no changes based on these comments.

One commenter read the refusal of transfer provisions at proposed § 17.121(c) and § 17.1005(d) to exclude payment for non-emergency care

provided up until the point that transfer was available but refused by the veteran. Under the applicable law, VA is authorized to provide reimbursement for emergency care only ''until * * * such time as the veteran can be transferred'' to a VA or other Federal facility. 38 U.S.C. 1725(f)(1)(C). *See also* 38 U.S.C. 1728(c) (adopting the meaning of ''emergency treatment'' provided in section 1725(f)(1)). VA intended that the proposed rule provide that the episode of care will be considered for payment up to the point in time where VA was able to accept transfer but the veteran refused or opted not to be transferred to the VA facility. Because the language in the proposed rule did not accurately express this statutory authorization and VA's intent, we have revised the language in both § 17.121(c) and § 17.1005(d). Specifically, in § 17.121(c), we have removed the language referring to the point of ''stabilization'' and replaced it with language referring to the point of ''refusal of transfer by the veteran.'' We make the same change in § 17.1005(d).

One commenter suggested that VA should provide payment for ancillary and pharmaceutical treatment in connection with the veteran's emergency care. To the extent the commenter wishes VA to reimburse veterans for the cost of such treatment provided during an episode of emergency care (prior to stabilization and a transfer determination), such treatment is in fact reimbursable as emergency care under this regulation—even if the emergency treatment includes the direct provision by the non-VA facility of a short course of medications needed to enable the discharge or transfer of the veteran. To the extent the commenter wishes VA to pay for medications provided after the episode of emergency care, this is beyond the scope of this rulemaking.

In light of the potential for confusion as to what constitutes emergency treatment under the regulation, we have added to § 17.120(b) and § 17.1002 clarification that emergency treatment includes ''medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged))''. This reflects our original intent, but should reduce or eliminate some of the concerns raised by the commenter.

We propose to clarify the term ''Federal facility'' in additional subsections of the regulations implementing 38 U.S.C. 1725 and 38 U.S.C. 1728. The term ''Federal facility'' is used in the definition of ''emergency treatment'' in subparagraph (C) of section 1725(f)(1) in the context of veterans being stable enough after an emergency to be transferred to a VA or other Federal facility and the availability of such facilities. 38 U.S.C. 1725(f)(1)(C). As identified in the notice of proposed rulemaking published on June 11, 2010 (75 FR 33216), the term ''Federal facility'' as it is used in 38 U.S.C. 1725(f)(1)(C) is clarified in this rulemaking in 38 CFR 17.121 and 17.1005 to mean ''Federal facility that VA has an agreement with to furnish health care services for veterans''. Practically, VA considers that ''emergency treatment'' should be considered to continue until transfer is possible and accepted to a VA facility or Federal facility with which VA has an agreement, because determining availability of or eligibly for other Federal facilities will typically not be feasible.

The term ''Federal facilities'' is also used in the definition of ''emergency treatment'' in subparagraph (A) of 38 U.S.C. 1725(f)(1), to specify that ''emergency treatment'' under sections 1728 and 1725 means, in pertinent part, ''medical care or services furnished, in the judgment of the Secretary—(A) when Department or other Federal facilities are not feasibly available and an attempt to use them beforehand would not be reasonable''. *See* definition of ''emergency treatment'' at 38 U.S.C. 1725(f)(1)(A) and 38 U.S.C. 1728(c) referencing such definition. Current regulations implementing sections 1728 and 1725 reiterate this requirement, explaining that payment or reimbursement may only be made if a VA or other Federal facility was not feasibly available, and an attempt to use them beforehand would not have been reasonable. *See* 38 CFR 17.1002(c) and 38 CFR 17.120(c). We propose to clarify the term ''Federal facilities'' as it is used in subparagraph (A) of section 1725(f)(1), just as we have done as it is used in subparagraph (C) of section 1725(f)(1), to mean only those Federal facilities ''that VA has an agreement with to furnish health care services for veterans.'' We make this change to allow for VA reimbursement of care provided in Federal facilities with which VA does not have an agreement and where the veteran would be personally liable for payment. Without this qualification, it may not be clear that VA can pay for or reimburse a veteran who obtains emergency care in a Federal facility with which VA does not have an agreement and which holds the veteran personally financially liable for the costs of the care.

Congress did not define ''Federal facility'' (or ''Federal facilities'') in 38 U.S.C. 1728 or 1725, which provide VA's authority to make payment or provide reimbursement for emergency treatment from non-VA providers. As indicated, we propose to interpret ''Federal facility'' (and ''Federal facilities'') to mean facilities that VA has an agreement with to furnish health care services for veterans. From a practical standpoint, this interpretation makes sense because VA would generally have no way of knowing whether other Federal resources are available at any one time without such agreement. Without knowing of the availability of such Federal facilities, it is the Secretary's judgment that those facilities cannot be considered reasonable or feasible in the context of a medical emergency. This interpretation is also consistent with the intent of the statute, which is to cover the costs of care for veterans when such care must be provided outside of the VA setting. If the veteran who has an accident on a military installation is personally financially liable for that care, the intent of the statute was to relieve that burden. We note, however, that we do not interpret the statute as requiring VA to reimburse a Federal facility when the veteran receiving care would not otherwise be financially liable.

Finally, although we have added this clarifying language, we note that this is not a change in VA's interpretation of the statute because VA currently interprets the statute in this way. These regulatory amendments merely codify VA's current interpretation for legal notice purposes. We, therefore, add the clarifying language ''that VA has an agreement with to furnish health care services for veterans'' after the term ''Federal facilities'' in § 17.120(c), ''Federal facility'' in § 17.1001(d), and ''Federal facility/provider'' in § 17.1002(c). We note the reference to ''other Federal facility'' in § 17.1001(d) pertains to the veteran's stability for transfer to a VA or other Federal facility, not other Federal facilities being unavailable at the time of the emergency, but was not noted for amendment in the notice of proposed rulemaking published on June 11, 2010 (75 FR 33216). The change reflects VA's existing interpretation of the statute.

For the reasons set forth in the supplementary information to the notice of proposed rulemaking and in this notice, VA is adopting the proposed rule as a final rule with the changes discussed above.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this notice, represents the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This action contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 14, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—Veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: December 14, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.120 by:
■ a. Revising the section heading.
■ b. In the introductory text, removing ''care'' and adding, in its place, ''emergency treatment'', removing ''medical services'' and adding, in its place, ''emergency treatment'', and removing ''may be paid'' and adding, in its place, ''will be paid''.
■ c. Revising paragraph (a) introductory text.
■ d. In paragraph (a)(3), removing ''United State'' and adding, in its place, ''United States'' and adding the word ''or'' at the end of paragraph (a)(3).
■ e. In paragraph (a)(4), removing ''§ 17.48(j); and'' and adding, in its place, ''§ 17.47(i)(2);''.
■ f. Revising paragraph (b).
■ g. Revising paragraph (c).

The revisions read as follows:

§ 17.120 Payment or reimbursement for emergency treatment furnished by non-VA providers to certain veterans with service-connected disabilities.

* * * * *

(a) *For veterans with service connected disabilities.* Emergency treatment not previously authorized was rendered to a veteran in need of such emergency treatment:

* * * * *

(b) *In a medical emergency.* Emergency treatment not previously authorized including medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe

pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. And,

(c) *When Federal facilities are unavailable.* VA or other Federal facilities that VA has an agreement with to furnish health care services for veterans were not feasibly available, and an attempt to use them beforehand or obtain prior VA authorization for the services required would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused.

■ 3. Section 17.121 is revised to read as follows:

§ 17.121 Limitations on payment or reimbursement of the costs of emergency treatment not previously authorized.

(a) *Emergency Treatment.* Except as provided in paragraph (b) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For this purpose, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, the veteran who received emergency treatment:

(1) Could have been transferred from the non-VA facility to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment, or

(2) Could have reported to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment.

(b) *Continued non-emergency treatment.* Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may only be approved for continued, non-emergency treatment, if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), and the transfer of the veteran was not accepted; and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to a VA facility (or to another Federal facility that VA has an agreement with to furnish health care services for veterans), which means the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients, at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(c) *Refusal of transfer.* If a stabilized veteran who requires continued non-emergency treatment refuses to be transferred to an available VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of refusal of transfer by the veteran.

(Authority: 38 U.S.C. 1724, 1728, 7304)

■ 4. Revise paragraph (d) of § 17.1001 to read as follows:

§ 17.1001 Definitions.

* * * * *

(d) The term *stabilized* means that no material deterioration of the emergency medical condition is likely, within reasonable medical probability, to occur if the veteran is discharged or transferred to a VA or other Federal facility that VA has an agreement with to furnish health care services for veterans.

* * * * *

■ 5. Amend § 17.1002 by:
■ a. Revising the introductory text.
■ b. Revising paragraph (c).
■ c. Removing paragraph (d).
■ d. Redesignating paragraphs (e) through (i) as new paragraphs (d) through (h) respectively.

The revision reads as follows:

§ 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency treatment (including medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged)) will be made only if all of the following conditions are met:

* * * * *

(c) A VA or other Federal facility/provider that VA has an agreement with to furnish health care services for veterans was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined the nearest available appropriate level of care was at a non-VA medical center);

* * * * *

■ 6. In § 17.1005, revise paragraph (b) and add paragraphs (c) and (d) as follows:

§ 17.1005 Payment limitations.

* * * * *

(b) Except as provided in paragraph (c) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For this purpose, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, a veteran who received emergency treatment:

(1) Could have been transferred from the non-VA facility to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment, or

(2) Could have reported to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment.

(c) Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may be approved for continued, non-emergency treatment, only if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans) and the transfer of the veteran was not accepted, and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to VA (or to another Federal facility that VA has an agreement with to furnish health care services for veterans), which means the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(d) If a stabilized veteran who requires continued non-emergency treatment refuses to be transferred to an available VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of refusal of transfer by the veteran.

* * * * *

§ 17.1006 [Amended]

■ 7. Amend § 17.1006 by removing ''Fee Service Review Physician or equivalent officer'' and adding, in its place, ''designated VA clinician''.

§ 17.1008 [Amended]

■ 8. Amend § 17.1008 by removing ''treatment'' in both places it appears, and adding, in each place, ''treatment and any non-emergency treatment that is authorized under § 17.1005(c) of this part''.

[FR Doc. 2011–32413 Filed 12–16–11; 8:45 am]

BILLING CODE 8302–01–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) throughout various sections to reflect price adjustments and mailing requirements changes associated with the October 2011 filing with the Postal Regulatory Commission (PRC).

DATES: Effective January 22, 2012.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield at (202) 268–7278.

SUPPLEMENTARY INFORMATION: On October 18, 2011, the Postal Service filed a notice of mailing services price adjustments with the PRC, effective on January 22, 2012. In addition, on October 24, 2011, the USPS™ published a proposed rule in the **Federal Register** (FR 76 65640–65653) based on the PRC filing. This final rule conveys the comments received on the proposal, our responses to comments, and the final mailing standards.

Prices are available under Docket Number R2012–3 on the Postal Regulatory Commission's Web site at *www.prc.gov,* and also on the Postal Explorer® Web site at *pe.usps.com.*

The Postal Service's final rule includes: several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology.

Comments

The Postal Service received comments from eight submitters on various aspects of the proposed changes. The comments and responses to them are included in the applicable subject matter sections below.

Changes for Letters

Commercial First-Class Mail Letters

The pricing structure for presorted and automation First-Class Mail® letters changes so that the minimum postage charge would be for a 2-ounce letter instead of the current 1-ounce minimum postage charge.

One commenter thought that the postage for 1-ounce presorted or automation letters would be increasing to the 2-ounce prices; we clarified that instead the prices for 2-ounce letters would be closer to the current prices (with an increase as proposed) for 1-ounce letters.

We received two sets of comments detailing the difficulties that would ensue for some mailers to determine, and apply, proper postage to residual pieces with single-piece postage if they were not also eligible for the reduced postage for 2-ounce letters, and requesting therefore that those single-piece letters also be eligible for reduced postage. They asked multiple questions about postage payment and separation of mail, since the free second ounce does not include residual pieces.

Beginning on January 22, 2012, the Postal Service is revising First-Class Mail pricing to change the first weight increment for presort and automation First-Class Mail letters to include pieces weighing up to two ounces. This is sometimes referred to as ''2nd ounce free.'' This program was developed in conjunction with customers with the goal of adding value to the mail. For example, customers may use the additional weight for their operational or marketing purposes to realize more value from their mailings. On average, the price of First-Class Mail Presort letters and cards is increasing by 1.58 percent while the price for First-Class Mail single-piece letters and cards increases by 2.47 percent. The lower price increase for presorted First-Class Mail is a direct result of the ''2nd ounce free'' program. While the single-piece 1-ounce letter price increases by one cent, the price increases for most automation First-Class Mail letters increases by one cent or less.

Regarding residual letters, the standards for how additional postage is paid for those pieces will not change. Regarding permit imprint mailings, the current standards for identical weight pieces will remain; if a mailing contains nonidentical weight pieces (even if the postage for such may be the same) a special postage payment system must be used to document the correct piece counts and postage. Residual pieces that are not eligible for a free second ounce must be separated by postage increment for verification purposes.

The Postal Service also removes standards for Reply Rides Free, because the program ends on December 31, 2011.

Commercial First-Class Mail and Standard Mail Letters

The Postal Service modifies the process of submitting mailpieces to the Pricing and Classification Service Center (PCSC) for testing and deletes the provision that pieces with attached release cards be sent to Engineering.

Standard Mail Letters

We clarify that overflow Standard Mail® nonmachinable letters that mailers place into existing trays at another level require matching documentation. We received a request to clarify whether there are DSCF entry prices for nonmachinable Standard Mail letters weighing over 3.3 ounces at the mixed ADC sort level. There will be no DSCF entry prices for nonmachinable letters at mixed ADC prices.

We received a comment requesting that we confirm that the prices for Standard Mail basic carrier route letters are the same for automation-compatible and nonautomation letters. The prices are currently the same, and will continue to be the same for both types of letters. One commenter noted that the maximum weight for carrier route letters is ''less than 16 ounces.'' This is currently the case and will continue to be so.

Changes for Flats

Automation Flats

The USPS clarifies that automation flats must meet the standards for all flats (such as flexibility) in 301.1.0 as well as the standards in 301.3.0. We received two questions about whether the minimum size for automation flats will remain as it is currently. The minimum size for automation flats is not changing; the applicable dimensions for automation flats continue to be in DMM 301.3.2.

Periodicals Flats

Currently, Periodicals flats are allowed on mixed area distribution center (MADC) pallets only when the flats are sacked. We will allow bundles of Periodicals flats to be placed directly on MADC pallets and assign a specific price for MADC pallets as well. One commenter asked if carrier route bundles would be permitted on MADC pallets; with this final rule, we affirm that we will allow carrier route bundles to be placed directly on MADC pallets. The bundle price for carrier route bundles on mixed ADC pallets will be the 5-digit bundle price.

The Postal Service revises a price categorization under nonmachinable flats to insert the correct categorization of *nonmachinable flats-nonbarcoded.*

The Postal Service is adding language to the pending standards in DMM 705.15. These standards relate to combined mailings of Standard Mail and Periodicals flats, scheduled for implementation on January 22, 2012. This change will clarify that bundles formed in a combined mailing of Standard Mail and Periodicals flats to the carrier route level may be placed on mixed network distribution center (NDC) pallets. The bundle price applicable to the 5-digit bundle placed on the mixed ADC container level will be applied to these bundles. Mailers may continue to claim the applicable carrier route piece price for pieces placed in carrier route bundles, when these bundles are placed on mixed NDC containers.

Detached Address Labels Used With Flats

The Postal Service adds a new term to identify detached address labels (DALs) with advertising. Inclusion of advertising turns DALs into dual-purpose pieces: optional addressing vehicles and marketing vehicles. A DAL with advertising on either side will be named as a detached marketing label (DML). Both DALs and DMLs may be used with saturation flats or with Standard Mail Marketing parcels.

We received several comments unrelated to the standards that suggested the proposed new prices for DALs with flats would be detrimental to continued profitable use of DALs for advertising purposes. As information, the USPS amended its filing to request that the new proposed price be higher than the current price but lower than the price originally proposed.

Changes for Parcels

Machinable Parcels

To align the standards for machinable parcels with current mail processing equipment capability, the Postal Service changes the dimensional criteria for all machinable parcels from the current 34 inches x 17 inches x 17 inches to 27 inches x 17 inches x 17 inches. We additionally reduce the maximum weight of a machinable parcel from 35 pounds to 25 pounds for all parcels except those mailed as Parcel Select® or Parcel Return Service. The maximum weight for machinable parcels that contain books or other printed matter remains at 25 pounds regardless of class of mail. We also modify the processes by which parcels that do not fully meet the machinability standards are evaluated for machinability. In addition, the Postal Service clarifies that parcels that meet the lightweight machinable parcel standards are definitively categorized as machinable parcels.

Standard Mail Parcels

Standard Mail regular parcels are separated into two groups: Marketing parcels and parcels that will become Parcel Select Lightweight™ parcels. Nonprofit Standard Mail parcels have separate standards for Nonprofit Marketing parcels and other Nonprofit parcels.

Marketing parcels are defined as containing information and/or product samples whose purpose is to encourage recipients to purchase a product or service, make a contribution, support a cause, form a belief or opinion, take an action, or provide information to recipients. Marketing parcels will be required to bear an alternative addressing format (occupant or exceptional addressing, or simplified addressing when allowed for saturation mail), and must be presented for mailing in carrier route (basic, high-density, or saturation sortation) or presort separations. All Marketing parcels would have a maximum size of 12 inches by 9 inches by 2 inches thick. When DALs are used with Marketing parcels, the weight of the DALs is added to the parcels in determining postage, as is currently the case, but there will be no separate charge for the DALs.

Included in this notice is a correction of a previously published error (in *Postal Bulletin* 22319, 9–8–2011) that allowed Signature Confirmation for Standard Mail parcels. This correction confirms that Standard Mail parcels are not eligible for Signature Confirmation service.

Not Flat-Machinables (NFMs)

In 2007, the USPS created a temporary NFM price category for Standard Mail items that could not meet revised automation flats standards. In the revised proposed rule **Federal Register** published on February 6, 2009 (74 FR 6250–6257), the Postal Service announced our intention to discontinue the NFM category in May 2010. In the March 25, 2010, *Postal Bulletin* (22281), we announced that the NFM price category would be extended. We now will eliminate the NFM category as of January 2012. Pieces that would have been mailed as NFMs should qualify as either Standard Mail Marketing parcels or Parcel Select Lightweight parcels.

We received two comments noting that some residual standards that mention NFMs still remained if the proposed new standards were to be adopted. We are grateful for the feedback and have amended the DMM changes to remove those references to NFMs.

One commenter also asked how pieces that have been mailed as NFMs would qualify for new prices and what efforts have been made to communicate with current NFM mailers. Marketing pieces (such as product samples) currently in the NFM category should be able to easily transition to the Marketing parcel category with little impact, assuming they are currently using a form of alternative addressing. If they are fulfillment pieces or the mailer is not willing to use an alternative address, the likely alternative would be Parcel Select Lightweight parcels. This has been communicated extensively through the relevant customer associations and in several **Federal Register** notices. The USPS will also attempt to contact current known NFM mailers to ensure that they are aware of the new mailing options in January 22, 2012.

Package Services Pieces

The Postal Service eliminates the provision to provide free local forwarding for Package Services pieces.

The USPS also will discontinue the 3-cent barcode discount for all Bound Printed Matter (BPM), Media Mail®, and Library Mail parcels. We received a request to confirm this and to state whether the barcode discount would continue for BPM flats. We will continue to allow a barcode discount for BPM flats as of January 22, 2012.

Special, Extra, and Other Services

Mailing Dates for Dropshipments

Mailers may use plant-verified drop shipments (PVDS) during the price change as follows:

• *Current Prices*—Mailers may use the current prices for PVDS mailings verified and paid for before January 22, 2012. We will accept these mailings at destination entry postal facilities through February 5, 2012 when presented with appropriate verification and payment documentation.

• *New Prices*—Mailers may use the new prices (effective January 22, 2012) for PVDS mailings verified and paid for beginning January 8, 2012, for deposit at destination facilities on or after January 22, 2012. For mailings with electronic documentation, mailers must enter a Mail Arrival Date that is on or after January 22, 2012. For mailings with hard copy postage statements, USPS acceptance employees must enter a Mail Arrival Date that is on or after January 22, 2012. The Postal Service will accept these mailings at destination entry postal facilities beginning January 22, 2012 when presented with appropriate verification and payment documentation.

Manifest Mailing System Clarification

In the June 2, 2011, *Postal Bulletin* (22312), the Postal Service announced a change in the administrative support process for Special Postage Payment Systems from formal agreements to authorizations. For manifest mailing systems, we incorrectly stated that the authorization document is a letter signed by the mailer and the Business Mail Support (BMS) manager. We are revising DMM 705.2.0 to clarify that an authorization letter is signed only by the BMS manager.

Delivery Confirmation and Signature Confirmation

We add clarifications in DMM 503.10 and 503.11 that Delivery Confirmation and Signature Confirmation services are available for First-Class Package Service parcels for only the electronic option.

Adult Signature

The Postal Service encourages and will permit the use of a hard copy PS Form 3811, *Domestic Return Receipt,* with Adult Signature service when used with Express Mail® or Priority Mail®, including shipments made under the Prevent All Tobacco Cigarettes Trafficking (PACT) Act. A return receipt fee will be charged in addition to regular postage and the Adult Signature fee.

Customers eligible to mail cigarettes and smokeless tobacco under the business/regulatory purposes and consumer testing exceptions of the PACT Act are currently limited to shipping via Express Mail with Hold For Pickup service. In January 2012, we will offer additional options: Express Mail with Adult Signature or Priority Mail with Adult Signature.

We received a comment suggesting that allowing Express Mail or Priority Mail with Adult Signature under the PACT Act will make it easier for underage smokers to obtain cigarettes and smokeless tobacco products. The new standards have not changed insofar as it relates to the statutory exceptions to the PACT Act. The labeling, acceptance, and delivery requirements are not relaxed and still provide ample opportunity to determine if mailings fit within the exceptions. The new standards simply provide mailers other service options that fit within the exceptions.

Confirm

The Postal Service discontinues Confirm service as a paid subscription service and replaces it with ''IMb™ Tracing,'' which will provide scan data similar to that provided through Confirm service, but with no paid subscription required. Under IMb Tracing service, mailers will continue to receive the same raw scan data through the same data-provisioning methods.

In response to requests for clarification of the transition process, we provide the following scenarios.

For customers transitioning from Confirm to IMb Tracing, who are using Intelligent Mail® barcodes and have no changes to their profile, the account profile will remain the same and information will flow as it does today. Future profile changes can be handled through emails to the help desk at *confirm@usps.gov.*

The change would have ended the use of PLANET® Code barcodes for mailers when their current subscription expired. To provide more time for mailers to transition to IMbs, existing Confirm customers who wish to continue using PLANET Code barcodes after their current subscription expires must submit a signed Confirm renewal application and pay the applicable fees for the new subscription period prior to January 22, 2012, for the PLANET code subscription IDs they would like to continue using. No renewed subscription under this provision will extend past January 2013. Subscription IDs associated with IMbs will remain the same. Applications can be mailed, faxed, or emailed to the help desk.

New customers not utilizing a third party must submit a signed IMb Tracing application and complete the application process similar to today's Confirm process.

Third-party service providers for data management currently receiving Confirm or IMb Tracing information may submit a signed application on behalf of new customers under these conditions:

• The signature must be from a representative of the MID owner.

• If the mail pieces will be produced by a company qualified to print the IMb, the customer will not have to submit samples to be tested.

• Applications can be mailed, faxed, or emailed to the help desk.

Waiver of Annual Mailing Fees for Full-Service Automation Mailings

The Postal Service revises certain requirements for mailers who present full-service (Intelligent Mail) automation mailings. When mailers present only full-service automation mailings of First-Class Mail or Standard Mail letters and flats or BPM flats with 90 percent or more pieces qualifying for full-service automation prices, the Postal Service will waive payment of the annual mailing fees for mailings presented under specific permits. As an additional allowance, when mailers present only qualifying full-service automation mailings with permit imprint indicia, those mailings will be able to be presented at any *PostalOne!*® acceptance office without payment of an additional permit imprint application fee or payment of an annual mailing fee at the other office(s).

We received a group of questions from two associations regarding how this initiative will be implemented, primarily about presenting mailings at offices other than the office where a permit is held. A recommendation was made about how to handle an instance of a mailing being submitted that does not meet the 90 percent eligibility, to allow later payment of the annual fee. Because of the many nuances involved in this initiative, we will implementing both aspects—waiver of annual presort fee and multiple entry points for permit imprint mailings—on February 12, 2012 to assure that all processes for employees and mailers are coordinated.

Paraphrased Comments and Responses

Comment: Is the 90% requirement for pieces per mailing or for all pieces on all mailings for the year?

Response: The requirement applies to each mailing.

Comment: Is it for all mailings of a mailer or by the specific permit, PC, PER account number?

Response: For each permit used with First-Class Mail, Standard Mail, and Bound Printed Matter full-service mailings; Periodicals are not eligible. There is no annual presort fee as long as each postage statement charged to the

permit remains at 90% or greater full-service pieces.

Comment: Should a mailer open an additional permit (obtain a separate permit number) for full-service mailings to mail all of their full-service mailings under and use another for non-full service mailings, which effectively negates the fee waiver.

Response: Management of permits is at the mailer's discretion.

Comment: Can a mailer present mail for a permit number from any acceptance office in the nation to their local acceptance office?

Response: Mailers may present qualified full-service mailings with mailpieces bearing a current valid permit imprint (that has been used only to present eligible Full-Service mailings) for acceptance at any USPS acceptance office that has *PostalOne!* acceptance functions.

Comment: What information needs to be used on the postage statement for the mailing, the permit number of the origin Post Office™ of mailing? Is any other information required?

Response: Hardcopy postage statements are not eligible for full-service mailings and therefore will not qualify to mail at other offices or waiver of fees. See the next comment and response for electronic documentation.

Comment: How are the permits that are used to pay the postage identified in Full Service eDocumentation? What records/fields are supposed to contain what information regarding the Permit numbers?

Response: Mail.dat® file submission:

□ Use of single permit at multiple BMEU locations (verification sites) requires use of account #.

□ MPA Record:

▪ Populate permit type, permit #, and ZIP + 4® fields to identify permit (authorization to mail).

▪ Populate account # field with CAPS number (traditional or non-traditional).

▪ Identification of Mail Preparer & Mail Owner by CRID or MID (cannot identify with a permit).

▪ Customer communications.

□ Segment Record—Verification Facility ZIP + 4 field (Pos 137–145):

▪ Populate with BMEU ZIP Code™ (5 or 9 digit).

▪ Drives the BMEU dashboard.

Comment: What information is required to be in the indicia on the mailpiece?

Response: Issuing office permit number and city/state or company imprint indicia may be printed in the permit imprint indicia on the piece and entered at any location.

Comment: What are the requirements regarding the commingling of permit imprint mail with permits outside the Post Office of mailing of the mailer when using the mailer's permit to pay the postage, or using the permit holder's permit to pay the postage? What will the 90% rule be applied to, the entire mailing or the portion of the mailing under the permit holder's permit?

Response: The 90% rule applies to single statements or the master statement (when there are multiple child statements) as follows:

- For single permit mailings, the statement must meet the 90% threshold.
- For multiple permit mailings, the master statement must meet the 90% threshold.
- Individual permits within the master statement do not have to meet the 90% threshold.

Comment: Can a mail service provider permit number be used for permit mail pieces in a commingled mailing originating from offices other than the mailer's acceptance office?

Response: The permit number used must be the number assigned to permit holders at the issuing office.

Comment: How does this affect mailing into other Post Offices for metered mail?

Response: The provision to mail at other offices under the waiver of fee initiative is limited to permit imprint mailing.

Comment: To not accept the mailing on a first occurrence of failing to meet the 90% rule would cause undue burden and costs on the mail owner.

Recommendation: That if the mail presenter is unable to pay the fee at that time, the mailing would be accepted on the first occurrence with promise to pay later by the permit holder and no further mailings would be accepted until the fee was paid.

Response: Our standards do not allow us to defer payment of fees once they are due. However, we expect that Full-Service mailers will know that their mailing will not meet the 90% requirement before they present the mailing and be able to plan accordingly.

Comment: If a mailing is presented to any acceptance office under the fee waiver provisions and fails to meet the 90% compliance rule, will all subsequent mailings using or bearing that permit number not be allowed entry at any other office other than the office where the permit is held?

Response: Yes, once mailings under a permit number fall below the established 90% full-service threshold, applicable fees must be paid for all subsequent mailings.

Post Office Boxes

The Postal Service will add a new 3-month prepaid Post Office Box™ service payment option, which is only available via recurring automatic payments.

Stamp Fulfillment Services

Currently, the Postal Service charges a standard fee for most Stamp Fulfillment Services orders; however Stamp Fulfillment Services shipping fees are not identified in the DMM nor listed in Notice 123—*Price List.* However, the fees are subject to regulation by the PRC.

The USPS adds new DMM language to explain that there are fees associated with Stamp Fulfillment Services and to refer customers to Notice 123 for the prices. A single standard fee is charged for orders up to $50, and a higher fee for larger orders.

Stationery

Currently, the USPS does not offer postcard stationery sheets that easily fit on standard computer printers. We will offer four perforated postcards on an 8½ inches x 11 inches sheet that can be fed readily into computer printers. Once separated, each card will be 4¼ inches x 5½ inches in size.

Additionally, the USPS does not currently offer personalized stamped postcards. In January 2012, we offer personalized stamped postcards with pre-printed return addresses.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

100 Retail Mail

101 Physical Standards

* * * * *

3.0 Physical Standards for Parcels

[Renumber current 3.1 through 3.6 as new 3.2 through 3.7 and add new 3.1 as follows:]

3.1 Processing Categories

USPS categorizes parcels into one of three mail processing categories: Machinable, irregular, or outside parcel. These categories are based on the physical dimensions of the piece, regardless of the placement (orientation) of the delivery address on the piece.

* * * * *

3.4 Machinable Parcels

[Revise the introductory text of renumbered 3.4 as follows:]

A machinable parcel is any piece that is not a letter or a flat and that is (see Exhibit 3.4):

* * * * *

[Revise item 3.4b as follows:]

b. Not more than 27 inches long, or 17 inches high, or 17 inches thick. Parcels cannot weigh more than 25 pounds, except Parcel Select and Parcel Return parcels which have a maximum weight of 35 pounds, except for those containing books or other printed matter (25 pound maximum).

Exhibit 3.4 Machinable Parcel Dimensions

[Revise the current length dimension in to read 27 inches and delete the sentences describing the minimum and maximum weights in Exhibit 3.4.]

* * * * *

170 Media Mail and Library Mail

173 Prices and Eligibility

1.0 Media Mail and Library Mail Prices

* * * * *

[Delete 1.4, Barcode Discount—Machinable Parcels, in its entirety, and renumber current 1.5 and 1.6 as new 1.4 and 1.5.]

* * * * *

200 Commercial Letters and Cards

201 Physical Standards

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2.0 Physical Standards for Nonmachinable Letters

* * * * *

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

[Revise 2.3 to read as follows:]

The nonmachinable prices in 243.1.0 apply to Standard Mail letter-size pieces that have one or more of the nonmachinable characteristics in 2.1. Mailers must prepare all nonmachinable letters as described in 245.5.0.

* * * * *

3.0 Physical Standards for Machinable and Automation Letters and Cards

* * * * *

[Revise the titles of 3.4 and 3.4.1 as follows:]

3.4 Standards for Letter-Size Pieces Containing One Disc (CD or DVD)

3.4.1 Basic Standards for One Disc in a Letter-Size Mailpiece

[Revise the text of 3.4.1 as follows:]

A letter-size mailpiece containing one disc and meeting the general standards in 3.0 and the specific standards in 3.4.3 is considered automation-compatible. A mailpiece with one enclosed disc not meeting these standards must be tested and approved for automation-compatibility. For this purpose, mailers must submit 5 sample mailpieces and a written request to the local postmaster or business mail entry manager for submission to the Pricing and Classification Service Center (PCSC).

* * * * *

3.12 Flexibility Standards for Automation Letters

* * * * *

3.12.2 USPS Services for Flexibility Testing

[Revise the text of 3.12.2 as follows:]

A mailer requesting flexibility testing for letter-size mailpieces must submit at least 5 mailpieces and a written request to their local postmaster or business mail entry manager for submission to the Pricing and Classification Service Center (PCSC) at least 6 weeks before the mailing date. The request must describe mailpiece contents and construction, number of pieces being produced, and preparation level. The PCSC will evaluate the piece and, if warranted, will instruct the mailer to submit samples to USPS Engineering for testing. The PCSC advises the mailer of its findings. If the mailpiece is approved, the letter includes a unique number identifying the piece and serves as evidence that the piece meets the relevant standards. A copy of the letter must accompany each postage statement submitted for mailings of the approved piece. If requested by the USPS, the mailer must show that pieces presented for mailing are the same as those approved.

3.13 Labels, Stickers, Release Cards, and Perforated Pockets Affixed to the Outside of Letter-Size Mailpieces

* * * * *

3.13.4 Letter-Size Piece With Attached Release Card

[Revise the introductory text of 3.13.4 as follows:]

A letter-size mailpiece, with one or two attached release cards, must have the following characteristics:

* * * * *

[Revise item 3.13.4b, to reduce the required clearance from the right edge from 1½ inches to 1 inch, as follows:]

b. No address element, including any address block barcode, may be closer than 1 inch to the right edge of the mailpiece.

* * * * *

230 First-Class Mail

233 Prices and Eligibility

1.0 Prices and Fees for First-Class Mail

* * * * *

1.2 Price Computation for First-Class Mail Letters

[Revise the text of 1.2 as follows:]

Commercial First-Class Mail presorted letters are charged at one price for the first 2 ounces, with separate prices for pieces over 2 ounces up to 3 ounces and for pieces over 3 ounces up to 3.5 ounces. Any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 2.2 ounces, the weight (postage) increment is 3 ounces. The pricing per ounce is similar for automation First-Class Mail letters, with pricing differences per sortation level.

* * * * *

3.0 Basic Standards for First-Class Mail Letters

* * * * *

3.4 Presort Mailing Fee

[Revise the text of 3.4 by inserting a new second sentence as follows:]

* * * Effective February 12, 2012, payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

[Delete 7.0, First-Class Mail Incentive Programs, in its entirety.]

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted and Automation Letters

* * * * *

2.2 Affixing Postage for Presorted and Automation First-Class Mail

Unless permitted by other standards or authorization by Business Mailer Support, when precanceled postage or meter stamps are used, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

[Revise item 2.2a as follows:]

a. Each metered piece weighing more than 2 ounces must bear the correct additional postage to pay for the additional ounce(s).

* * * * *

[Revise item 2.2c as follows:]

c. Each metered piece must bear full postage at the lowest First-Class Mail letter price (or card price as applicable) appropriate to the mailing plus any additional ounce(s) or nonmachinable surcharge.

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.4 Presort Mailing Fees

[Revise the text of 3.4 by inserting a new second sentence as follows:]

* * * Effective February 12, 2012, payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

245 Mail Preparation

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.4 Nonmachinable Preparation

* * * * *

5.4.2 Traying and Labeling

[Revise the introductory text of 5.4.2 as follows:]

When all full trays for a destination have been prepared, mailers may include a group of 10 or more overflow pieces for that destination in a qualified tray at either of the next two tray levels. For example, overflow pieces for a 5-digit destination may be placed into an existing correct 3-digit tray; if a 3-digit tray that includes the 5-digit destination does not exist, the overflow pieces may be placed into the correct existing ADC tray. Bundle the overflow pieces separately with the correct presort bundle label or OEL; the pieces will still qualify for the 5-digit price. Mailers must note these trays on standardized documentation (see 708.1.2). Preparation sequence, tray size, and labeling:

* * * * *

300 Commercial Flats

301 Physical Standards

1.0 Physical Standards for Flats

* * * * *

1.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

Flat-size mailpieces that do not meet the standards in 1.3 through 1.6 must pay applicable higher prices as noted in either 1.7a or 1.7b below.

a. Flat-size pieces that do not meet flexibility, uniform thickness, or polywrap standards in 1.3 through 1.5 must pay these applicable prices:

* * * * *

[Revise item 1.7a3 as follows:]

3. Standard Mail—parcel prices.

* * * * *

2.0 Physical Standards for Nonautomation Flats

* * * * *

2.2 Standard Mail

2.2.1 Basic Physical Standards

These additional standards apply to Standard Mail flat-size pieces:

* * * * *

[Revise item 2.2.1b as follows:]

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and pay the parcel prices.

* * * * *

3.0 Physical Standards for Automation Flats

3.1 Basic Standards for Automation Flats

[Revise the text of 3.1 as follows:]

Flat-size pieces claimed at automation prices must meet the standards in 1.0 and in 3.0, and the eligibility standards for the class of mail and price claimed. For automation flats, the size standards in 3.2 supersede the size standards in 1.1.

* * * * *

330 First-Class Mail

333 Prices and Eligibility

* * * * *

3.0 Eligibility Standards for First-Class Mail Flats

* * * * *

3.4 Presort Mailing Fee

[Revise the text of 3.4 by inserting a new second sentence as follows:]

* * * Effective February 12, 2012, payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.2 Defining Characteristics

3.2.1 Weight, Shape, Flexibility, and Uniform Thickness

[Revise the second sentence of 3.2.1 as follows:]

* * * Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.4 must be prepared as parcels and pay parcel prices.

* * * * *

3.4 Presort Mailing Fees

[Revise the text of 3.4 by inserting a new second sentence as follows:]

* * * Effective February 12, 2012, payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

4.0 Price Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Prices

The minimum per piece prices (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise item 4.2b by incorporating items b1and b2 into the text of item b and revising as follows:]

b. In applying the minimum per piece prices, if the piece meets both the definition of a letter in 201.1.1.1 and the definition of an automation flat in 301.3.0, the piece may be prepared and entered at an automation flat price.

Pieces mailed as Customized MarketMail (CMM) under 705.1.0 must pay CMM prices.

* * * * *

4.4 Shape, Flexibility, and Uniform Thickness

[Revise 4.4 as follows:]

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.4 must be prepared as parcels and pay parcel prices.

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

1.1.4 Barcoded Discount—Flats

[Revise the text of 1.1.4 as follows:]

The barcoded discount applies only to BPM flat-size pieces that meet the requirements in 301.3.0 and bear a delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.5.0 and 708.4.0. The pieces must be part of a nonpresorted mailing of 50 or more flat-size pieces.

* * * * *

1.2 Commercial Bound Printed Matter

* * * * *

1.2.6 Destination Entry Mailing Fee

[Add a new second sentence to 1.2.6 as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90 percent or more pieces qualifying for full-service prices.

* * * * *

400 Commercial Parcels

401 Physical Standards

1.0 Physical Standards for Parcels

* * * * *

1.3 Maximum Weight and Size

[Revise text of 1.3 by inserting a new fourth sentence to read as follows:]

* * * Standard Mail Marketing parcels (see 2.4) may not be larger than 12 inches long, 9 inches high, and 2 inches thick. * * *

* * * * *

1.5 Machinable Parcels

1.5.1 Criteria

[Revise the introductory sentence to 1.5.1 as follows:]

A machinable parcel is any piece that is not a letter or a flat and that is (see Exhibit 1.5.1):

* * * * *

[Revise item 1.5.1b as follows:]

b. Not more than 27 inches long, or 17 inches high, or 17 inches thick. Parcels cannot weigh more than 25 pounds, except Parcel Select and Parcel Return parcels which have a maximum weight of 35 pounds, except for those containing books or other printed matter (25 pound maximum).

Exhibit 1.5.1 Machinable Parcel Dimensions

[Revise the current length dimension to read 27 inches and delete the sentences describing the minimum and maximum weights in Exhibit 1.5.1.]

* * * * *

[Revise the title and the introductory text of 1.5.2 as follows:]

1.5.2 Criteria for Lightweight Machinable Parcels

A parcel that weighs less than 6 ounces (but not less than 3.5 ounces) is machinable if it meets all of the following conditions:

* * * * *

1.5.4 Exception

[Revise 1.5.4 as follows:]

Mailers of parcels that do not conform to the machinability criteria in 1.5.1 or 1.5.2 may request authorization to mail such parcels as machinable parcels by contacting the manager, Pricing and Classification Service Center (PCSC; see 608.8.1 for address). The manager, PCSC, in conjunction with the manager, Operations Integration and Support, may authorize such parcels as machinable if the parcels are tested on NDC parcel sorters and prove to be machinable. Mailers requesting testing of parcels for machinability must:

a. Submit a written request and two sample parcels to the PCSC. The request must list the mailpiece characteristics for every shape, weight, construction, and size to be considered. If the request describes a mailpiece that falls within the specifications of pieces that were tested previously, the mailpiece may not require testing.

b. State the estimated number of parcels to be mailed in the next 12 months, and the anticipated preparation level (*e.g.,* destination NDC pallets).

c. Upon acknowledgement from the manager, Operations Integration and Support, the mailer may be required to send 100 mailpiece samples to the designated test facility at least 6 weeks prior to the first mailing date. The USPS may recommend changes to physical characteristics of the mailpieces, and additional testing of the redesigned pieces, before authorizing parcels as machinable.

* * * * *

2.0 Additional Physical Standards by Class of Mail

* * * * *

[Revise the title of 2.4 to read as follows:]

2.4 Standard Mail Parcels

* * * * *

[Revise title and text of 2.4.2 to delete references to Not Flat-Machinables and add standards for Marketing parcels to read as follows:]

2.4.2 Marketing Parcels

Marketing parcels do not meet letters or flats standards and have the following characteristics:

a. Height not more than 9 inches high. Minimum height must be 3½ inches if the parcel is ¼ inch thick or less.

b. Length not more than 12 inches long. Minimum length must be 5 inches if the parcel is ¼ inch thick or less.

c. Thickness at least 0.009 thick, but not more than 2 inches.

d. An alternative addressing format, according to 602.3.0.

* * * * *

2.6 Bound Printed Matter Parcels

2.6.1 General Standards

[Revise the text of 2.6.1 by moving the text of item 2.6.1a into the introductory sentence and deleting item 2.6.1b in its entirety as follows:]

Pieces mailed at Bound Printed Matter prices may not weigh more than 15 pounds.

402 Elements on the Face of a Mailpiece

1.0 All Mailpieces

* * * * *

1.2 Delivery and Return Address

[Revise 1.2 by reorganizing the text and adding a new last sentence to read as follows:]

The delivery address specifies the location to which the USPS is to deliver a mailpiece (see 602 for more information). Except for pieces prepared with detached address labels under 602.4.0, each mailpiece must have a visible and legible delivery address only on the side of the piece bearing postage. A return address is required in specific circumstances (see 3.2 and 602.1.5). Standard Mail Marketing parcels (see 443) must use an alternative addressing format under 602.3.0.

* * * * *

4.0 General Barcode Placement for Parcels

* * * * *

4.3 POSTNET Barcodes, GS1–128 Routing Barcodes and Intelligent Mail Package Barcodes

[Revise text of 4.3 by deleting references to Not Flat-Machinable pieces and revising other text to read as follows:]

First-Class Package Service parcels and Standard Mail irregular parcels may bear POSTNET barcodes (under 4.3.1 through 4.3.3) or GS1–128 routing barcodes. First-Class Package Service parcels and Standard Mail irregular parcels bearing POSTNET barcodes representing only the postal routing barcode (destination ZIP Code) are eligible to be mailed using eVS under 705.2.9. POSTNET barcodes may not be used on eVS parcels bearing concatenated GS1–128 barcodes.

4.3.1 General Placement of POSTNET Barcodes

[Revise text of 4.3.1 by deleting references to Not Flat-Machinable piece under 6 ounces and revising other text to read as follows:]

On a First-Class Package Service parcel or Standard Mail irregular parcel, the POSTNET barcode may be anywhere on the address side at least ⅛ inch from any edge of the piece. Print POSTNET barcodes according to 708.4.0. Address block barcodes are subject to 4.3.2.

* * * * *

440 Standard Mail

443 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

* * * * *

[Revise title of 1.2 to read as follows:]

1.2 Regular and Nonprofit Standard Mail—Marketing Parcel Prices

* * * * *

[Revise title of 1.3 as follows:]

1.3 Nonprofit Standard Mail—Machinable and Irregular Parcel Prices

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.2 Defining Characteristics

* * * * *

[Renumber current 3.2.2 through 3.2.8 as 3.2.4 through 3.2.10 and add new 3.2.2 and 3.2.3 as follows:]

3.2.2 Standard Mail Marketing Parcels

All Standard Mail Marketing parcels (both regular and nonprofit) must bear an alternative addressing format (see 602.3.0) and are subject to size restrictions in 401.2.4.2.

3.2.3 Nonprofit Standard Mail Machinable and Irregular Parcels

Nonprofit Standard Mail parcels that do not qualify as Marketing parcels may be prepared and mailed as machinable or irregular parcels.

* * * * *

3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

* * * * *

[Revise text of item 3.3d to read as follows:]

d. Each Marketing parcel must bear an alternative addressing format subject to 602.3.0. Nonprofit Standard Mail machinable or irregular parcels must bear the addressee's name and complete delivery address, or may use an alternative addressing format. Detached address labels may be used subject to 602.4.0.

* * * * *

4.0 Price Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Prices

The minimum per piece prices (*i.e.,* the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise text of item 4.2c as follows:]

c. Individual Prices. There are separate minimum per piece prices for each product and, within each product, for the presort and destination entry levels within each mailing. There are also separate prices for regular Marketing parcels, for Nonprofit Marketing parcels, and for Nonprofit machinable parcels and Nonprofit irregular parcels. DDU prices are available for parcels entered only at 5-digit or one of the Enhanced Carrier Route prices.

4.3 Piece/Pound Prices

[Revise the text of 4.3 as follows:]

Pieces that exceed 3.3 ounces are subject to a two-part piece/pound price that includes a fixed charge per piece and a variable pound charge based on weight. There are separate per piece prices for each product and within each product for the type of mailing and the presort and destination entry levels within each mailing. There are separate per pound prices for each product. There are also separate prices for Marketing parcels and for Nonprofit machinable parcels and Nonprofit irregular parcels.

4.4 Surcharge

[Revise the introductory text of 4.4 to read as follows:]

Unless prepared in carrier route or 5-digit/scheme containers, Standard Mail parcels are subject to a surcharge if:

* * * * *

[Revise item 4.4b as follows:]

b. The Marketing parcels or the machinable parcels do not bear a GS1–128 routing barcode or Intelligent Mail package barcode, under 708.5.0, for the delivery address.

[Delete current item 4.4c in its entirety; redesignate current item d as new item c and revise to read as follows:]

c. The irregular parcels do not bear a GS1–128 routing barcode, Intelligent Mail package barcode or POSTNET barcode for the delivery address.

4.5 Extra Services for Standard Mail

4.5.1 Available Services

[Revise the introductory text of 4.5.1 as follows:]

Only the following extra services may be used with Standard Mail parcels, with restrictions as noted in 4.5.2:

* * * * *

[Delete 4.5.2, Eligible Matter, in its entirety and renumber current 4.5.3 and 4.5.4 as new 4.5.2 and 4.5.3.]

* * * * *

4.5.3 Additional Preparation Requirements

[Revise the introductory text of renumbered 4.5.3 as follows:]

An eligible mailpiece with an extra service must bear a return address under 602.1.0, and an ancillary service endorsement under 507.1.0 under the following conditions:

[Revise item 4.5.3b as follows:]

b. Except for Standard Mail Marketing parcels, pieces with Delivery Confirmation must bear one of the required endorsements in 4.5.3a or ''Change Service Requested.'' Standard Mail Marketing parcels with required alternative address formats may be mailed with Delivery Confirmation, but must not bear an ancillary service endorsement (see 602.3.1.2).

* * * * *

5.0 Additional Eligibility Standards for Presorted Standard Mailpieces

* * * * *

5.2 Price Application

[Revise 5.2 as follows:]

Prices for Standard Mail and Nonprofit Standard Mail apply separately to Marketing parcels that meet the eligibility standards in 2.0 through 4.0 and the preparation standards in 445.5.0, 705.6.0, 705.8.0, or 705.20. Prices for Nonprofit parcels not qualifying as Marketing parcels apply separately to machinable parcels and irregular parcels. When parcels are combined under 445.5.0, 705.6.0, or 705.20, all pieces are eligible for the applicable prices when the combined total meets the eligibility standards.

* * * * *

[Revise title of 5.4 to read as follows:]

5.4 Prices for Irregular Parcels and Marketing Parcels

5.4.1 5-Digit Price

[Revise the introductory text of 5.4.1 as follows:]

5-digit prices apply to irregular parcels and to Marketing parcels that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

* * * * *

[Delete item 5.4.1e in its entirety.]

5.4.2 SCF Price

[Revise the introductory text of 5.4.2 as follows:]

SCF prices apply to irregular parcels and to Marketing parcels that are dropshipped and presented to a DSCF or DNDC:

* * * * *

5.4.3 NDC Price

[Revise the introductory text of 5.4.3 as follows:]

NDC prices apply to irregular parcels and to Marketing parcels as follows under either of the following conditions:

* * * * *

5.4.4 Mixed NDC Price

[Revise the text of 5.4.4 as follows:]

Mixed NDC prices apply to irregular parcels and to Marketing parcels in origin NDC or mixed NDC containers that are not eligible for 5-digit, SCF, or NDC prices. Place parcels at mixed NDC prices in origin NDC or mixed NDC sacks under 445.5.4.4 or on origin NDC or mixed NDC pallets under 705.8.10.

[Revise the title of 6.0 as follows:]

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Marketing Parcels

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

[Revise the introductory text of 6.1.2 as follows:]

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route mailing of Standard Mail Marketing parcels must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP + 4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these addressing standards:

* * * * *

[Revise item d2 to require alternative addressing to read as follows:]

2. An alternative addressing format as described in 602.3.0.

* * * * *

[Revise the first sentence of item 6.1.2f to indicate new size restrictions to read as follows:]

f. Enhanced Carrier Route Marketing parcels may not be more than 9 inches high, 12 inches long, or 2 inches thick.

* * *

* * * * *

445 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Delete current items 1.3e, Origin/Entry 3-Digit, 1.3g, Origin Optional Entry SCF, and 1.3h, ADC, in their entirety and redesignate current items 1.3f, 1.3i, 1.3j, 1.3k, and 1.3l as new items 1.3e through 1.3i.]

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Delete current item 1.4d in its entirety and redesignate current items e through j as new items d through i.]

2.0 Bundles

2.1 Definition of a Bundle

[Revise the last sentence in 2.1 by deleting the reference to 5-digit bundles and Not Flat-Machinables to read as follows:]

* * * Bundling under 445 is allowed only for Marketing parcels mailed at carrier route prices.

* * * * *

2.11 Facing Slips—All Carrier Route Mail

All facing slips used on carrier route bundles must show this information:

* * * * *

[Revise item 2.11b as follows:]

b. Line 2: Content (appropriate to the class), followed by carrier route type and route number (*e.g.,* ''STD MKTG LOT CR R 012'').

* * * * *

4.0 Sack Labels

* * * * *

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. *Codes:* The codes shown below must be used as appropriate in Line 2 of sack labels:

[Revise the table in item 4.4b by adding a new row after ''Machinable'' (seventh row) with ''Marketing Parcels'' (new eighth row) in the ''CONTENT TYPE'' column and with ''MKTG'' in the ''CODE'' column as follows:]

Content type	Code
* * * * *	
Machinable	MACH
Marketing Parcels	MKTG

* * * * *

5.0 Preparing Presorted Parcels

5.1 Basic Standards

[Revise the introductory sentence of 5.1 as follows:]

All mailings and all pieces in each mailing at Standard Mail and Nonprofit Standard Mail parcel prices are subject to preparation standards in 5.3 or 5.4, and to these general standards:

* * * * *

[Revise item 5.1b as follows:]

b. Marketing parcels, Nonprofit machinable parcels, and Nonprofit irregular parcels must each be prepared as separate mailings, except under 5.3.1.

* * * * *

5.2 Markings

[Revise the text of 5.2 as follows:]

All parcels must be marked according to 402.2.0.

[Revise the title of 5.3 as follows:]

5.3 Preparing Marketing Parcels (6 Ounces or More) and Machinable Parcels

5.3.1 Sacking

[Revise the introductory text of 5.3.1 as follows:]

Prepare mailings of Marketing parcels weighing 6 ounces or more and mailings

of machinable parcels under 5.3.0. Prepare 5-digit sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Prepare ASF or NDC sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices). There is no minimum for parcels in 5-digit/scheme sacks entered at a DDU. Mailers combining irregular parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2a. Mailers combining Marketing parcels weighing 6 ounces or more with machinable parcels placed in ASF, NDC, or mixed NDC sacks must prepare the sacks under 5.3.2. For mailings of only Marketing parcels weighing 6 ounces or more, use ''MKTG'' on line 2 of sack labels instead of ''MACH'' under items 5.3.2a through e.

* * * * *

[Revise the title of 5.4 as follows:]

5.4 Preparing Marketing Parcels (Less Than 6 Ounces) and Irregular Parcels

5.4.1 Bundling

[Revise the text of 5.4.1 as follows:]

Bundling is permitted only for bundles of carrier route Marketing parcels under 7.0.

5.4.2 Sacking

[Revise the text of 5.4.2 as follows:]

Prepare mailings of Marketing parcels weighing less than 6 ounces and mailings of irregular parcels under 5.4.0. Prepare 5-digit sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. See 5.4.3 for restrictions on SCF, ASF, and NDC sacks. Mailers must prepare a sack when the mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers combining irregular parcels with machinable parcels and Marketing parcels weighing 6 ounces or more in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Marketing parcels weighing less than 6 ounces in sacks under 5.4.3. For mailings of only Marketing parcels weighing less than 6 ounces, use ''MKTG'' on line 2 of sack labels instead of ''IRREG'' under items 5.4.3a through f.

* * * * *

[Delete 5.4.3, Drop Shipment, in its entirety and renumber current 5.4.4 as new 5.4.3.]

[Delete current 6.0 in its entirety and renumber all of current 7.0 as new 6.0.]

* * * * *

6.0 Preparing Enhanced Carrier Route Parcels

6.1 Basic Standards

[Revise the introductory text of renumbered 6.1 as follows:]

All mailings and all pieces in each mailing at an Enhanced Carrier Route (ECR) parcel price are subject to specific preparation standards in 6.4, and 6.5, and to these general standards:

[Revise items 6.1a through d as follows:]

a. All pieces must meet the standards for basic eligibility in 443.2.0 through 443.4.0 and specific eligibility in 443.6.0. Nonprofit Enhanced Carrier Route Standard Mail must meet the additional eligibility standards in 703.1.0.

b. All pieces in each mailing must be Marketing parcels as defined in 443.3.2.2.

c. All pieces must meet the applicable general preparation standards in 1.0 through 4.0, and the following:

1. Pieces must be sequenced according to 6.6 and 6.7.

2. Pieces with a simplified address format must meet the standards in 602.3.0.

d. All pieces in the mailing must meet the specific sortation and preparation standards in 6.0 or the palletization standards in 705.8.0.

* * * * *

6.3 Residual Pieces

[Revise the text of renumbered 6.3 as follows:]

Parcels not sorted as a carrier route mailing must be prepared as a separate mailing at Standard Mail Presorted prices.

6.4 Bundling

* * * * *

6.4.2 Bundles and Sacks With Fewer Than the Minimum Number of Pieces Required

[Revise the text of renumbered 6.4.2 as follows:

As a general exception to 6.4.1 and 6.5.1, mailers may prepare a bundle with fewer than 10 pieces and a less-than-full sack with fewer than 125 pieces or less than 15 pounds of pieces to a carrier route when they are claiming the saturation price for the contents and the applicable density standard is met. Mailers using Express Mail Open and Distribute or Priority Mail Open and Distribute to dropship ECR parcels also may prepare sacks of fewer than 125 pieces or less than 15 pounds of mail.

[Revise the title of renumbered 6.5 as follows:]

6.5 Preparing Carrier Route Marketing Parcels

6.5.1 Sack Minimums

[Revise the introductory text of renumbered 6.5.1 as follows:]

Except under 6.4.1, a sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

* * * * *

[Revise item 6.5.1b as follows:]

b. For nonidentical-weight pieces, mailers must use the minimum that applies to either the average piece weight for the entire mailing or the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

* * * * *

6.5.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. Carrier route: Required (minimum of 125 pieces/15 pounds).

* * * * *

[Revise item a2 as follows:]

2. Line 2: ''STD MKTG WSS'' or ''STD MKTG WSH'' or ''STD MKTG LOT'' as applicable, followed by the route type and number.

b. 5-digit carrier routes: Required (no minimum).

* * * * *

[Revise item b2 as follows:]

2. Line 2: ''STD MKTG CR–RTS.''

* * * * *

446 Enter and Deposit

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

* * * * *

[Revise item 5.2b by deleting the reference to Not Flat-Machinable pieces to read as follows:]

b. One or more parcels in 5-digit containers.

* * * * *

450 Parcel Select

* * * * *

456 Enter and Deposit

* * * * *

2.0 Deposit

* * * * *

2.17 DNDC Parcel Select—Acceptance at Designated SCF

* * * The following standards apply:

* * * * *

[Revise item 2.17b as follows:]

b. Bound Printed Matter machinable parcels under 466.4.3, and Standard Mail and Parcel Select Lightweight machinable parcels under 705.6.0 may be included.

* * * * *

460 Bound Printed Matter

463 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

[Delete 1.1.3 Barcode Discount—Machinable Parcels in its entirety and renumber current items 1.1.4 and 1.1.5 as new 1.1.3 and 1.1.4.]

1.2 Commercial Bound Printed Matter

* * * * *

1.2.3 Bound Printed Matter Presorted and Carrier Route Prices

[Delete the second sentence of 1.2.3 in its entirety.]

1.2.4 Bound Printed Matter Destination Entry Prices

[Delete the second sentence of 1.2.4 in its entirety.]

* * * * *

4.0 Price Eligibility for Bound Printed Matter Parcels

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Delete item 4.1d in its entirety.]

* * * * *

466 Enter and Deposit

* * * * *

4.0 Destination Network Distribution Center (DNDC) Entry

* * * * *

4.2 Acceptance at Designated SCF—Mailer Benefit

* * * The following standards apply:

* * * * *

[Revise item 4.2c as follows:]

c. Parcel Select machinable parcels under 456.2.6, and Standard Mail and Parcel Select Lightweight machinable parcels under 705.6.0 may be included.

* * * * *

470 Media Mail and Library Mail

473 Prices and Eligibility

* * * * *

6.0 Price Eligibility for Media Mail and Library Mail Parcels

* * * * *

6.3 Price Categories for Media Mail and Library Mail Parcels

* * * The price categories and discounts are as follows:

[Delete item 6.3c in its entirety.]

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

4.0 Insured Mail

* * * * *

4.2 Basic Information

* * * * *

4.2.2 Eligible Matter

The following types of mail may be insured:

* * * * *

[Revise item 4.2.2b as follows:]

b. Standard Mail parcels (bulk insurance only).

* * * * *

4.2.3 Ineligible Matter

The following types of mail may not be insured:

* * * * *

[Revise item 4.2.3f as follows:]

f. Standard Mail letters and flats.

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

* * * * *

6.2.4 Additional Services

[Revise the introductory text of 6.2.4 as follows:]

If return receipt service has been purchased with one of the services listed in 6.2.2, one or more of the following extra services may be added at the time of mailing if the standards for the services are met and the additional service fees are paid:

* * * * *

[Add new item 6.2.4f as follows:]

f. Adult Signature (Express Mail and Priority Mail only), under restrictions in 8.2.6.

* * * * *

7.0 Restricted Delivery

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Eligible Matter

Restricted Delivery service is available for:

* * * * *

[Revise item 7.2.2b as follows:]

b. Standard Mail parcels when bulk insurance (for more than $200.00) is purchased at the time of mailing.

* * * * *

8.0 Adult Signature

* * * * *

8.2 Basic Information

* * * * *

8.2.5 Confirmation of Delivery

Confirmation of delivery information for Adult Signature is available as follows:

* * * * *

[Add new item 8.2.5c as follows:]

c. Return receipt service (hard copy PS Form 3811 option only), under 6.0, may be purchased with Express Mail or Priority Mail pieces requesting Adult Signature.

8.2.6 Additional Services

Adult Signature may be combined with:

* * * * *

[Add new item 8.2.6d as follows:]

d. Return receipt (hard copy PS Form 3811 only) for Express Mail and Priority Mail pieces.

* * * * *

9.0 Return Receipt for Merchandise

* * * * *

9.2 Basic Information

* * * * *

9.2.2 Eligible Matter

[Revise the text of 9.2.2 as follows:]

Return receipt for merchandise is available for merchandise sent as Priority Mail (excluding Critical Mail), Standard Mail machinable and irregular parcels, Package Services, and Parcel Select pieces.

* * * * *

10.0 Delivery Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 10.2.2 as follows:]

Delivery Confirmation is available for First-Class Mail parcels and First-Class Package Service parcels (electronic option only); all Priority Mail pieces; Standard Mail parcels (electronic option only); Package Services, Parcel Select, and Parcel Select Regional Ground parcels (electronic option only) under 401.1.0. * * *

* * * * *

10.2.3 Electronic Option Delivery Confirmation for Standard Mail

[Revise the first sentence of 10.2.3 as follows:]

If electronic option Delivery Confirmation is requested for all pieces in the mailing and the pieces are of identical weight, then postage may be paid with metered postage or permit imprint under the applicable standards in 444.2.0 for parcels. * * *

* * * * *

11.0 Signature Confirmation

11.1 Signature Confirmation Fees

11.1.1 Fee

[Revise the text of 11.1 to delete the current first sentence in its entirety, so that the complete text is as follows:]

Signature Confirmation fee is in addition to postage and other fees and is charged per piece. See Notice 123—Price List.

* * * * *

11.2 Basic Information

* * * * *

11.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 11.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels and First-Class Package Service parcels (electronic option only); all Priority Mail pieces; Package Services, Parcel Select, and Parcel Select Regional Ground parcels (electronic option only) under 401.1.0. * * *

* * * * *

[Revise the title of 14.0 as follows:]

14.0 Confirm Service and IMb Tracing

[Delete the current text of 14.1 through 14.4 and replace with the following:]

14.1 Basic Information

14.1.1 General Information

IMb Tracing replaces Confirm service. Participation in Confirm service is limited to those customers who have already paid for a current subscription until the subscription expires. After the expiration of a Confirm subscription, IMb Tracing provides the same basic information as Confirm, but is available at no charge without a subscription. Requirements for participation in IMb Tracing are the use of the Intelligent Mail barcode, the use of a Mailer Identifier that has been registered (via the Business Customer Gateway, accessible on *usps.com*) to receive scan data, and verification by the Postal Service that the Intelligent Mail barcode (IMb) as printed meets all applicable postal standards.

14.1.2 Description of Service

IMb Tracing (and Confirm) provides a mailer with data electronically collected from the scanning of barcoded mailpieces as they pass through automated mail processing operations. Scanned data can include the postal facility where such pieces are processed, the postal operation used to process the pieces, the date and time when the pieces are processed, and the numeric equivalent of a barcode(s) that help to identify the specific pieces. Any piece intended to generate scanned data must meet the physical characteristics and standards in 14.0, although not every piece is guaranteed such data or complete data. This service does not provide proof of delivery. Existing Confirm users must convert to the use of IMb Tracing to receive data once existing subscriptions expire.

14.1.3 Availability

IMb Tracing is available to mailers for obtaining scan data for automation-compatible letter-size and automation-compatible flat-size mail.

14.2 Barcodes

14.2.1 General Barcode Requirements

Each piece in a mailing that is intended to generate IMb Tracing information must bear an Intelligent Mail barcode under 14.2.2. Until the time when their current Confirm subscription expires, mailers may use PLANET Code barcodes and POSTNET barcodes under the provisions in Publication 197, *Confirm Service Featuring OneCode Confirm,* accessible online at *http://ribbs.usps.gov/.* Otherwise, mailers must apply Intelligent Mail barcodes under 708.4.0 and the following standards:

a. Reply pieces must meet the following standards:

1. For Business Reply Mail, the piece must bear a barcode that corresponds to the subscriber's Business Reply Mail ZIP+4 codes assigned by the USPS under 507.9.0.

2. For other reply mail, the piece must bear a barcode that correctly corresponds to the delivery address.

b. Outgoing pieces must bear an Intelligent Mail barcode that correctly corresponds to the delivery address.

14.2.2 Intelligent Mail Barcode Requirements

To obtain IMb Tracing, mailers apply Intelligent Mail barcodes on letter-size pieces or on flat-size pieces meeting automation-compatibility standards in 201.3.0 (letters) or 301.3.0 (flats). No other barcode use is acceptable on these pieces. Only one Intelligent Mail barcode may appear on each piece, according to these standards:

a. Intelligent Mail barcodes must meet the barcode and format standards in 708.4.0 and in Specification USPS–B–3200 at *http://ribbs.usps.gov/.*

b. Place barcodes on letters according to 202.5.0 and on flats according to 302.5.0.

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

* * * * *

1.5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 1.5.3a and Exhibit 1.5.3k, with these additional conditions:

* * * * *

[Revise item 1.5.3j as follows:]

j. A returned piece endorsed ''Return Service Requested'' is charged the applicable single-piece First-Class Mail price for the weight and shape of the piece, or the Priority Mail price for the weight and destination of the piece.

* * * * *

1.5.4 Package Services and Parcel Select

Undeliverable-as-addressed (UAA) Package Services and Parcel Select mailpieces are treated as described in Exhibit 1.5.4, with these additional conditions:

* * * * *

[Revise item 1.5.4d as follows:]

d. If a Package Services (except for unendorsed Bound Printed Matter) or a Parcel Select mailpiece and any attachment are not opened by the addressee, the addressee may refuse delivery of the piece and have it returned to the sender without affixing

postage. Pieces endorsed ''Change Service Requested'' are not returned to sender. If a Package Services or Parcel Select piece or any attachment to that piece is opened by the addressee, the addressee must affix the applicable postage to return the piece to the sender. If the addressee does not want to pay forwarding postage for all Package Services mail, use PS Form 3546 to notify the postmaster of the old address to discontinue the forwarding of Package Services mail.

[Revise item 1.5.4e as follows:]

e. An undeliverable Package Services (except for unendorsed Bound Printer Matter) or a Parcel Select mailpiece that bears postage with a postage evidencing imprint and that has no return address or illegible return address is returned to the meter licensee or PC Postage customer upon payment of the return postage. The reason for nondelivery is attached, with no address correction fee. All Package Services and Parcel Select pieces must have a legible return address.

* * * * *

Exhibit 1.5.4 Treatment of Undeliverable Package Services Mail and Parcel Select

* * * * *

[Revise the text in the Exhibit 1.5.4 column ''USPS Treatment of UAA Pieces'' endorsement ''Address Service Requested'' as follows:]

If change-of-address order on file:

[Revise the first sentence of the introductory text in the first bullet as follows:]

• *Months 1 through 12:* Package Services forwarded at the single-piece price for the class of mail.* * *

* * * * *

[Revise the text in the Exhibit 1.5.4 column ''USPS Treatment of UAA Pieces'' endorsement ''Forwarding Service Requested as follows:]

If change-of-address order on file:

[Revise the first sentence of the introductory text in the first bullet as follows:]

• *Months 1 through 12:* Package Services forwarded at the single-piece price for the class of mail. * * *

* * * * *

2.0 Forwarding

* * * * *

2.3 Postage for Forwarding

* * * * *

2.3.6 Package Services and Parcel Select

[Delete the current second sentence of 2.3.6 and revise the entire text to read as follows:]

Package Services and Parcel Select pieces are subject to the collection of additional postage at the applicable price for forwarding; Parcel Select at the Parcel Select nonpresort price plus the additional service fee and Package Services at the single-piece price for the specific class of mail. The addressee may refuse any piece of Package Services or Parcel Select that has been forwarded. Shipper Paid Forwarding, under provisions in 4.2.9, provides mailers an option of paying forwarding postage for parcels instead of the addressee paying postage due charges.

* * * * *

508 Recipient Services

* * * * *

4.0 Post Office Box Service

* * * * *

4.2 Basic Information for Post Office Box Service

* * * * *

4.2.7 Service Period

[Revise the text of 4.2.7 as follows:]

Post Office Box service is available in 3-, 6- or 12-month prepaid periods. The 3-month option is available only through recurring automatic payments. The 3-month option is not available at Post Office locations using the semi-annual (April/October) payment schedule.

* * * * *

4.5 Basis of Fees and Payment

* * * * *

4.5.4 Payment

[Revise the first sentence of 4.5.4 as follows:]

All fees for Post Office Box service are for 3-, 6- or 12-month prepaid periods, except as noted under 4.5.6, 4.5.7, and 4.5.10. * * *

* * * * *

4.7 Fee Refund

4.7.1 Calculation

When Post Office Box service is terminated or surrendered by the customer, the unused portion of the fee may be refunded as follows:

[Revise item 4.7.1a as follows:]

a. If service is discontinued at any time within the first 3 months of the 6-month or 12-month service period, then one-half of the fee is refunded. None of the fee is refunded under the 3-month payment option.

* * * * *

[Revise item 4.7.1c as follows:]

c. If service is discontinued and the customer has prepaid for the next quarterly or semiannual service period, then the entire fee for that next period is refunded.

4.7.2 Discontinued Postal Facility

[Revise the second sentence of 4.7.2 as follows:]

* * * For this purpose, one-sixth of a semiannual fee is refunded for each month left in the payment period. For the 3-month payment option, one-third of a 3-month fee is refunded for each month left in the payment. * * *

* * * * *

7.0 Hold for Pickup

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Basic Eligibility

[Revise the second sentence of the introductory text of 7.2.2 as follows:]

* * * Hold For Pickup service is also available with online and commercial mailings of Priority Mail (except Critical Mail), First-Class Package Service parcels, Parcel Select barcoded, nonpresorted parcels, and Parcel Select Regional Ground parcels when: * * *

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

1.0 General Standards

* * * * *

1.2 Minimum Dimensions

For mailability, the following standards apply:

* * * * *

b. All mailpieces (except keys and identification devices) that are ¼ inch thick or less must be:

[Revise item 1.1.2b4 as follows:]

4. Except for machinable parcels described in 401.1.5.2, pieces mailed at parcel prices may have finished corners that do not exceed a radius of 0.5 inch (½ inch). See Exhibit 1.2b4.

* * * * *

1.4 Length and Height

Determine the processing category (see 1.1) based on the physical dimensions and characteristics of the mailpiece, without regard to address placement. Then, determine length and height as follows:

* * * * *

[Revise item 1.4c as follows:]

c. *Parcels:* The *length* is the longest dimension.

* * * * *

11.0 Cigarettes and Smokeless Tobacco

* * * * *

11.5 Exception for Business/ Regulatory Purposes

* * * * *

11.5.2 Mailing

* * * All mailings under the business/regulatory purposes exception must:

[Revise 11.5.2a as follows:]

a. Be entered in a face-to-face transaction with a postal employee (carrier pickup not permitted) as Express Mail with Hold for Pickup service, Express Mail with an Adult Signature service (see 503.8.0), or Priority Mail with an Adult Signature service;

* * * * *

11.6 Exception for Certain Individuals

* * * * *

11.6.2 Mailing

* * * Each mailing under the certain individuals exception must:

[Revise 11.6.2a as follows:]

a. Be entered (carrier pickup not permitted) as Express Mail with Hold For Pickup service, Express Mail with an Adult Signature service (see 503.8.0), or Priority Mail with an Adult Signature service; unless shipped to APO/FPO/DPO addresses under 11.6.4.

* * * * *

[Revise 11.6.2c as follows:]

c. Bear the full name and mailing address of the sender and recipient on the Express Mail or Priority Mail label;

* * * * *

11.6.3 Delivery

Delivery under the certain individuals exception is made under the following conditions:

* * * * *

[Revise 11.6.3c as follows:]

c. For Express Mail or Adult Signature articles, once age is established, the recipient must sign PS Form 3849 in the appropriate signature block.

* * * * *

11.7 Consumer Testing Exception

* * * * *

11.7.2 Mailing

* * * Mailings must be tendered under the following conditions:

* * * * *

b. All mailings under the consumer testing exception:

[Revise 11.7.2b1 as follows:]

1. Be entered in a face-to-face transaction with a postal employee (carrier pickup not permitted) as Express Mail with Hold For Pickup service, Express Mail with Adult Signature Restricted Delivery service (see 503.8.0), or Priority Mail with Adult Signature Restricted Delivery service;

* * * * *

[Revise 11.7.2b4 as follows:]

4. Must bear the full mailing addresses of both the sender and recipient on the Express Mail or Priority Mail label (the name and address of the sender must match exactly those listed on the customer's application on file with the PCSC);

* * * * *

11.7.3 Delivery

Mailings bearing the markings for consumer testing can only be delivered to the named addressee under the following conditions:

* * * * *

[Revise 11.7.3c as follows:]

c. The name on the identification must match the name of the addressee on the Express Mail or Priority Mail label.

602 Addressing

* * * * *

[Revise the title of 4.0 as follows:]

4.0 Detached Address Labels (DALs) and Detached Marketing Labels (DMLs)

[Revise the title of 4.1 as follows:]

4.1 DAL and DML Use

[Revise the title and text of 4.1.1 as follows:]

4.1.1 Definitions

For these standards, *item(s)* refers to the types of mail described in 4.1.2 through 4.1.4. *DALs* in their basic form may be used by mailers as an optional method of addressing and printing of postage indicia on the DALs instead of printing addresses and postage on the items mailed with the DALs. *DMLs* are types of DALs, but also include advertising. For purposes of standards in 4.0, the term ''DALs'' (or ''DAL'') will be used to mean both DALs and DMLs, unless a standard specifically states that it applies only to DMLs.

* * * * *

[Revise the title and text of 4.1.3 as follows:]

4.1.3 Standard Mail Marketing Parcels

DALs may be used with Standard Mail Marketing parcels mailed at carrier route, high density, or saturation parcel prices.

* * * * *

4.1.5 Alternative Addressing Format

[Revise the text of 4.1.5 as follows:]

DALs may have alternative addressing formats under 3.0, subject to the applicable standards.

* * * * *

4.2 Label Preparation

* * * * *

4.2.5 Other Information

[Revise the text of 4.2.5 as follows:]

In addition to the information described in 4.2.2 and 4.2.4, and an indicium of postage payment, only official pictures and data circulated by the National Center for Missing and Exploited Children may appear on the front of a DAL. Advertising may appear on a DML, under the following conditions:

a. The DMLs must meet the physical characteristics for DALs under 4.2.1 and have a correct POSTNET or Intelligent Mail barcode with an 11-digit routing code (see 708.4.0).

b. The advertising must not obstruct or overlap any of the required elements on the front of a DML.

c. The advertising must be to the left of the delivery address and placed to maintain required clear spaces around the address and postage payment (see 202 and 1.0).

* * * * *

4.5 Postage

4.5.1 Prices

[Revise the text of 4.5.1 as follows:]

DAL mailings are not eligible for automation prices, but the pieces may qualify for carrier route prices, subject to applicable standards. Mailers must pay a surcharge for each DAL used with Standard Mail flats. See Notice 123—Price List for prices.

4.5.2 Postage Computation and Payment

[Revise the introductory text of 4.5.2 as follows:]

Postage is computed based on the combined weight of the item and the accompanying DAL. If the number of DALs and items mailed is not identical, the number of pieces used to determine postage is the greater of the two. No postage refund is allowed in these situations. In addition, these methods of postage payment apply:

* * * * *

[Revise items 4.5.2b and 4.5.2c as follows:]

b. Standard Mail flats and parcels (at the applicable postage) and Bound Printed Matter pieces must be paid by permit imprint, which must appear on each DAL.

c. A surcharge applies to each DAL (including DMLs) used in a Standard Mail flats mailing.

* * * * *

604 Postage Payment Methods

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2.0 Stamped Stationery

* * * * *

2.3 Other Stationery

2.3.1 Stamped Cards

[Revise 2.3.1 as follows:]

Stamped cards are available as single stamped cards, double (reply) stamped cards, and in sheets of 40 for customer imprinting. Single and double stamped cards are 3½ inches high by 5½ inches long. Stamped cards are also available in 8½ inches by 11 inches perforated and non-perforated sheets with four 4¼ inches by 5½ inches cards. Non-perforated sheets must be cut so that the stamp is in the upper right corner of each card. The USPS offers personalized stamped cards (cards imprinted with a return address).

* * * * *

[Add the new 2.3.4 as follows:]

2.3.4 Printing Specifications

The printing specifications for personalized stamped envelopes also apply to stamped postcards (see 2.2.3).

* * * * *

[Add new item 2.4 as follows:]

2.4 Stamp Fulfillment Service

2.4.1 Description

Stamp Fulfillment Services provides the fulfillment of stamp orders placed by customers via mail, phone, fax, or online to the Stamp Fulfillment Services organization. Stamp Fulfillment Services charges shipping and handling fees associated with fulfilling stamp orders. The fees vary depending on the dollar amount of the order. All prices and fees are listed on Notice 123—Price List.

* * * * *

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

* * * * *

2.2 Basic Standards

2.2.1 Authorization Document

An MMS is established through a letter of authorization as follows:

* * * * *

[Revise item 2.2.1b as follows:]

b. An MMS approved by Business Mailer Support is authorized with a letter (or previously-approved service agreement) signed by the Business Mailer Support manager. The authorization letter contains provisions regarding mailer and USPS responsibilities, including document retention and quality control.

* * * * *

2.3 Keyline

* * * * *

2.3.3 Price Category Abbreviations

* * * * *

b. Standard Mail:

Exhibit 2.3.3b Price Category Abbreviations—Standard Mail

*[Revise Exhibit 2.3.3b by deleting the row with ''NF * * * Not Flat-Machinable'' text (fourth from the bottom) in its entirety.]*

2.9 Electronic Verification System

* * * * *

2.9.2 Availability

eVS may be used only for mail paid with a permit imprint and the following classes and subclasses of mail:

* * * * *

[Revise items 2.9.2d and 2.9.2e as follows:]

d. *Regular Standard Mail.* Presorted prices, destination network distribution center (DNDC) prices, destination sectional center facility (DSCF) prices, and destination delivery unit (DDU) prices; machinable and irregular parcels.

e. *Nonprofit Standard Mail.* Presorted prices, DNDC prices, DSCF prices, and DDU prices; machinable and irregular parcels.

* * * * *

6.0 Combining Mailings of Standard Mail, Package Services, and Parcel Select Parcels

[Revise the title of 6.1 by deleting the reference to NFMs to read as follows:]

6.1 Basic Standards for Combining Parcels

6.1.1 Basic Standards

[Revise text in the first sentence of 6.1.1 by deleting NFMs to read as follows:]

Standard Mail parcels, Package Services, and Parcel Select parcels in combined mailings must meet the following standards:

* * * * *

[Revise the title of 6.2 by deleting reference to NFMs to read as follows:]

6.2 Combining Parcels—DNDC Entry

[Revise 6.2 by deleting reference to NFMs 6 ounces or more to read as follows:]

Mailers may combine Standard Mail machinable parcels with Package Services and Parcel Select machinable parcels for entry at an NDC when authorized by the USPS under 6.1.4.

* * * * *

6.2.2 Additional Standards

[Revise the introductory text of 6.2.2 by deleting references to NFMs 6 ounces or more to read as follows:]

Standard Mail machinable parcels and Package Services and Parcel Select machinable parcels prepared for DNDC entry must meet the following conditions in addition to the basic standards in 6.1:

[Revise the text of 6.2.2a by deleting references to NFMs to read as follows:]

a. Each piece in a combined Standard Mail, Package Services, and Parcel Select mailing must meet the criteria for machinable parcels in 401.1.5.

* * * * *

[Revise the text of 6.2.2e by deleting references to NFMs to read as follows:]

e. Mailers must deposit combined machinable parcels at NDCs or ASFs (see Exhibit 6.2.3) under applicable standards in 15.0.

* * * * *

6.3 Combining Parcels—Parcel Select ONDC Presort, NDC Presort, DSCF, and DDU Prices

6.3.1 Qualification

Combination requirements for specific discounts and prices are as follows:

[Revise items 6.3.1a through d by deleting references to NFMs 6 ounces or more to read as follows:]

a. When claiming Parcel Select ONDC Presort discounts, machinable Standard Mail parcels may be combined with machinable Parcel Select and Package Services parcels under 6.3 only if the mailpieces are palletized and each pallet or pallet box contains a 200-pound minimum.

b. When claiming Parcel Select NDC Presort discounts, machinable Standard Mail parcels may be combined with machinable Parcel Select and Package Services parcels under 6.3 only if the mailpieces are palletized and each pallet or pallet box contains a 200 pound minimum.

c. When claiming the DSCF price for Parcel Select or Bound Printed Matter parcels, Standard Mail parcels may be combined with Package Services and Parcel Select parcels under 6.3.

d. All Standard Mail parcels may be combined with Package Services and

Parcel Select parcels prepared for DDU prices under 6.3.

* * * * *

6.4 Combining Package Services, Parcel Select, and Standard Mail—Optional 3-Digit SCF Entry

* * * * *

6.4.2 Qualifications and Preparation

[Revise the introductory paragraph of 6.4.2 by deleting references to NFMs to read as follows:]

Parcel Select, Bound Printed Matter machinable parcels, and Standard Mail parcels may be prepared for entry at designated SCFs under these standards:

[Revise item 6.4.2a by deleting references to NFMs to read as follows:]

a. Standard Mail parcels that weigh less than 2 ounces and Standard Mail parcels that are tubes, rolls, triangles, and similar pieces may not be included.

[Revise item 6.4.2b as follows:]

b. Mailers must prepare pieces on 3-digit pallets or pallet boxes, or unload and physically separate the pieces into containers as specified by the destination facility.

* * * * *

[Revise item 6.4.2d by deleting references to NFMs to read as follows:]

d. Standard Mail machinable parcels are eligible for the NDC presort level, DNDC price; irregular parcels are eligible for the 3-digit presort level, DSCF price.

* * * * *

8.0 Preparing Pallets

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.2 Periodicals—Bundles, Sacks, or Trays

[Add a new last sentence in the introductory text to read as follows:]

* * * Prepare pallets in the following sequence:

* * * * *

[Revise the introductory text of item 8.10.2j to read as follows:]

j. *Origin Mixed ADC (OMX), optional,* permitted for sacks and trays, and bundles of flats. Pallet may contain carrier route, automation price, and/or presorted price mail. Labeling:

* * * * *

[Revise the introductory text of item 8.10.2k to read as follows:]

k. *Mixed ADC, optional,* permitted for sacks and trays, and bundles of flats. Pallet may contain carrier route, automation price, and/or presorted price mail. Pallets must not contain origin mixed ADC (OMX) sacks, bundles, or trays. Labeling:

* * * * *

8.10.3 Standard Mail—Bundles, Sacks, or Trays

[Revise the third sentence of the introductory text of 8.10.3 for clarity, and add two new sentences at the end of the introductory text, to read as follows:]

* * * Use this preparation only for irregular parcels in sacks or Marketing parcels in carrier route bundles. * * * For Marketing parcel mailings, use ''MKTG'' instead of ''IRREG'' on line 2 of the pallet placard. Preparation sequence and labeling:

* * * * *

[Revise the title and introductory text of 8.10.6 to read as follows:]

8.10.6 Combined Mailings of Standard Mail Marketing Parcels 6 Ounces or More, Standard Mail, Package Services, and Parcel Select Machinable Parcels

Prepare pallets under 8.0 in the sequence below. Unless indicated as optional, all sort levels are required. Combined mailings of Standard Mail Marketing parcels, Standard Mail, Parcel Select, and Package Services machinable parcels also must meet the standards in 6.0 or 20.0. Label pallets under applicable standards in 8.6 and according to Line 1 and Line 2 information below:

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH'' to revise item 8.10.6a as follows:]

a. *5-digit scheme, required.* Pallet must contain parcels for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD/PSVC MACH 5D;'' followed by ''SCHEME'' (or ''SCH'').

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH'' to revise item 8.10.6b as follows:]

b. *5-digit, required.* Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD/PSVC MACH 5D''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH'' to revise item 8.10.6c as follows:]

c. *ASF, optional, but required for DNDC prices.* Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD/PSVC MACH ASF.''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH'' to revise item 8.10.6d as follows:]

d. *NDC, required.* Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.

2. Line 2: ''STD/PSVC MACH NDC.''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH'' to revise item 8.10.6e as follows:]

e. *Mixed NDC, optional.* Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).

2. Line 2: ''STD/PSVC MACH WKG.''

[Revise title and introductory text of 8.10.7 to remove references to Not Flat-Machinables and NFMs and revise as follows:]

8.10.7 Machinable Parcels—Standard Mail, Including Marketing Parcels 6 Ounces or More, and Parcel Select Lightweight

Mailers who palletize machinable parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below for DNDC, DSCF, or DDU prices. When prepared at origin, a 200-pound minimum is required for the NDC price. Prepare pallets under 8.0 in the sequence below. Unless indicated as optional, all sort levels are required. Label pallets under applicable standards in 8.6 and according to Line 1 and Line 2 information below:

[Revise items 8.10.7a through f by removing reference to NFMs and revising as follows:]

a. 5-digit scheme, required. Pallet must contain parcels for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, prepare 5-digit pallets under 8.10.7b, Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD/PSLW MACH 5D.

b. 5-digit, required. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD/PSLW MACH 5D.''

c. ASF, optional, but required for DNDC prices. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.
2. Line 2: ''STD/PSLW MACH ASF.''

d. NDC, required. Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:
1. Line 1: Use L601.
2. Line 2: ''STD/PSLW MACH NDC.''

e. Origin NDC (required); no minimum; labeling:
1. Line 1: L601, Column B.
2. Line 2: ''STD/PSLW MACH NDC.''

f. Mixed NDC, optional; no minimum. Labeling:
1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).
2. Line 2: ''STD/PSLW MACH WKG.''

[Revise the title and introductory text of 8.10.8 as follows:]

8.10.8 Irregular Parcels Weighing 2 Ounces or More—Standard Mail, Including Marketing Parcels, and Parcel Select Lightweight

Mailers who palletize unbundled or unsacked irregular parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below for DNDC, DSCF, or DDU prices. When prepared at origin, a 200 pound minimum is required for the NDC price. Prepare pallets or pallet boxes of irregular parcels (except tubes, rolls, and similar pieces) weighing 2 ounces or more under 8.0 and in the sequence listed below. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6. Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes, except for pieces in carrier route bundles or in sacks under 8.10.3. Preparation sequence and labeling:

[Revise items 8.10.8a through g by deleting references to NFMs and changing line 2 content as follows:]

a. 5-digit scheme, required. Pallet or pallet box must contain parcels only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.8b. Labeling:
1. Line 1: Use L606.
2. Line 2: ''STD/PSLW IRREG 5D; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. * * *. Labeling:
1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD/PSLW IRREG 5D.''

c. SCF, required. * * * Labeling:
1. For Line 1, L002, Column C.
2. For Line 2, ''STD/PSLW IRREG SCF.''

d. ASF, optional, but required for DNDC prices. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:
1. Line 1: Use L602.
2. Line 2: ''STD/PSLW IRREG ASF''.

e. NDC, required. Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:
1. Line 1: Use L601.
2. Line 2: ''STD/PSLW IRREG NDC''.

f. Origin NDC (required); no minimum; labeling:
1. Line 1: L601, Column B.
2. Line 2: ''STD/PSLW IRREG NDC''.

g. Mixed NDC, optional. Labeling:
1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).
2. Line 2: ''STD/PSLW IRREG WKG''.

* * * * *

[Delete current 8.10.9, Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces, in its entirety.]

* * * * *

15.0 Combining Standard Mail Flats and Periodicals Flats

15.1 Basic Standards

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15.1.9 Other Periodicals Pricing

Other prices for Periodicals flats in a combined mailing of Standard Mail and Periodicals flats on pallets will be assessed as follows:

* * * * *

[Add a new 15.1.9e as follows:]

e. The bundle price applicable to the 5-digit bundle for the mixed ADC container level will apply to carrier route bundles placed on mixed NDC pallets.

* * * * *

21.0 Optional Combined Parcel Mailings

21.1 Basic Standards for Combining Parcel Select, Package Services, and Standard Mail Parcels

21.1.1 Basic Standards

[Revise the first sentence in 21.1.1 by deleting the references to NFMs to read as follows:]

Package Services parcels, Parcel Select parcels, and Standard Mail parcels in a combined parcel mailing must meet the following standards:

* * * * *

d. Combined mailings must meet the following minimum volume requirements:

[Revise item d1 to delete the reference to NFMs to read as follows:]

1. Standard Mail—Minimum 200 pieces or 50 pounds of Standard Mail parcels.

* * * * *

21.2 Price Eligibility

* * * * *

21.2.2 Price Application

Apply prices based on the criteria in 400 and the following standards:

[Revise item 21.2.2a by deleting the reference to NFMs to read as follows:]

a. Standard Mail parcels are based on the container level and entry (see 443.5.0.

* * * * *

21.3 Mail Preparation

21.3.1 Basic Standards

Prepare combined mailings as follows:

a. Different parcel types must be prepared separately for combined parcel mailings as indicated below:

[Revise item a1 through a4 by deleting the references to NFMs to read as follows:]

1. Standard Mail, Parcel Select, and Package Services machinable parcels. Use ''STD/PSVC MACH'' for line 2 content labeling.

2. Standard Mail, Parcel Select, and Package Services irregular parcels at least 2 ounces and up to (but not including) 6 ounces, except for tubes, rolls, triangles, and other similarly irregularly-shaped pieces. Use ''STD/PSVC'' for line 2 content labeling.

3. Standard Mail, Parcel Select, and Package Services tubes, rolls, triangles, and similarly irregularly-shaped parcels; and all parcels weighing less than 2 ounces. Use ''STD/PSVC IRREG'' for line 2 content labeling.

4. Combine all parcel types in 5-digit and 5-digit scheme containers. Use ''STD/PSVC PARCELS'' for line 2 content labeling.

* * * * *

[Revise the title of 21.3.2 to read as follows:]

21.3.2 Combining Standard Mail, Parcel Select, and Package Services Machinable Parcels

* * * * *

[Revise the title of 21.3.3 to read as follows:]

21.3.3 Combining Standard Mail, Parcel Select, and Package Services Apps-Machinable Parcels

* * * * *

[Revise the title of 21.3.4 to read as follows:]

21.3.4 Combining Standard Mail (Under 2 Ounces), Parcel Select, and Package Services Other Irregular Parcels

* * * * *

23.0 Full-Service Automation Option

* * * * *

[Revise the title of 23.2 as follows:]

23.2 General Eligibility Standards

[Renumber current 23.3 and 23.4 as new 23.4 and 23.5, and add new 23.3 as follows:]

23.3 Eligibility for Waiver of Annual Fees and Waiver of Deposit of Permit Imprint Mail Restrictions

Effective February 12, 2012, mailers who present only full-service automation mailings (of First-Class Mail cards, letters, and flats, Standards Mail letters and flats, or Bound Printed Matter flats) that contain 90 percent or more pieces eligible for full-service automation prices are eligible for the following exceptions to standards:

a. The annual presort mailing or destination entry fees, as applicable, will be waived for qualified full-service mailings.

b. Mailers may present qualified full-service mailings with mailpieces bearing a current valid permit imprint for acceptance at any USPS acceptance office that has *PostalOne!* acceptance functions without payment of any additional permit imprint application or annual mailing fees.

c. If any mailing (of the classes and shapes of mail in 23.3) presented under a mailing permit does not contain at least 90 percent of the pieces qualifying for full-service automation prices:

1. The mailer must pay the applicable annual fee before that mailing may be accepted.

2. The provision in 23.3b for presentation of mailings at multiple offices is discontinued for all mailings presented under the applicable permit imprint.

* * * * *

707 Periodicals

* * * * *

2.0 Price Application and Computation

2.1 Price Application

* * * * *

2.1.2 Applying Outside-County Piece Prices

* * * Apply piece prices for Outside-County mail as follows:

* * * * *

c. Nonmachinable flats:

* * * * *

[Revise item 2.1.2c2 as follows:]

2. Apply the ''Nonmachinable Flats—Nonbarcoded'' prices to pieces that meet the standards for nonmachinable flats in 707.26 but do not include a barcode.

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.3 Price Level Column Headings

[Revise the introductory text of 1.3 as follows:]

The actual name of the price level (or abbreviation) is used for column headings required by 1.2 and shown below:

* * * * *

b. Presorted First-Class Mail, barcoded and nonbarcoded Periodicals flats, nonbarcoded Periodicals letters, and machinable and nonmachinable Standard Mail:

[Revise the table in 1.3b by revising the rows 4, 6, 9, 11, and 12 as follows:]

SCF [for Standard Mail parcels]	SCF
* * * * *	
ADC [First-Class Mail parcels, First-Class Mail. Package Service parcels, Standard Mail nonmachinable letters, flats, and irregular parcels and all Periodicals].	AD
* * * * *	
Mixed ADC [Standard Mail nonmachinable letters, flats, and irregular parcels; and all Periodicals].	MD
* * * * *	
NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	NDC
* * * * *	
Mixed NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	MNDC
SCF [sacks and pallets, Periodicals flats, Bound Printed Matter, Standard mail irregular parcels less than 6 ounces].	SCF

* * * * *

1.4 Sortation Level

The actual sortation level (or corresponding abbreviation) is used for the bundle, tray, sack, or pallet levels required by 1.2 and shown below:

[Revise row 19 (fifth from the bottom) of the table in 1.4 as follows:]

* * * * *

4.0 Standards for POSTNET and Intelligent Mail Barcodes

* * * * *

4.4 Reflectance

4.4.1 Background Reflectance

A background reflectance of at least 50% in the red portion and 45% in the green portion of the optical spectrum must be produced in the following locations when measured with a USPS or USPS-licensed envelope reflectance meter:

* * * * *

[Revise item 4.4.1-b as follows:]

b. The area surrounding the barcode (within ⅛ inch of the leftmost and rightmost bars and 1/25 inch above and below the barcode) of a card-size, letter-size, or flat-size piece barcoded in the address block and of a flat-size, First-Class Mail parcel, or First-Class Package Service parcel barcoded elsewhere.

* * * * *

4.4.4 Dark Fibers and Background Patterns

Dark fibers or background patterns that produce a print contrast ratio of more than 15% when measured in the red and green portions of the optical spectrum are prohibited in these locations:

* * * * *

[Revise item 4.4.4b as follows:]

b. The area of the address block or the area of the mailpiece where the barcode appears on a flat-size piece in an automation mailing or on a First-Class Mail parcel or a First-Class Package Service parcel.

* * * * *

4.5 Skew and Baseline Shift

* * * * *

[Revise the title and text of 4.5.2 as follows:]

4.5.2 Flat-Size Pieces, First-Class Mail Parcels, First-Class Package Service Parcels, and Standard Mail Irregular Parcels

The maximum rotational skew (slant or tilt of the individual barcode bars) for barcodes is ±10 degrees from a perpendicular to the baseline of the barcode. There is no positional skew requirement. The individual bars of a barcode must not shift (be vertically

offset) more than 0.015 inch from the average baseline of the barcode. For information on barcode placement for flat-size pieces, see 302.5.0. For information on barcode placement on parcels weighing less than 6 ounces, see 402.4.0.

* * * * *

5.0 Standards for Package and Extra Service Barcodes

* * * * *

5.2 Other Package Barcodes

5.2.1 Basic Standards for Postal Routing Barcodes

[Revise the first sentence of 5.2.1 as follows:]

Mailers may use a postal routing barcode on parcels that meet the applicable eligibility requirements in 433 for First-Class Package Service, 443 for Standard Mail, 453 for Parcel Select, 463 for Bound Printed Matter, or 473 for Media Mail or Library Mail. * * *

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.4 3-Digit Content Identifier Numbers

* * * * *

Exhibit 6.2.4 3-Digit Content Identifier Numbers

CLASS AND MAILING CIN HUMAN–READABLE CONTENT LINE

* * * * *

STANDARD MAIL

* * * * *

[Delete the following heading and the six rows beneath it in their entirety.]

STD Not Flat-Machinable Pieces Less Than 6 Ounces—Nonautomation

[Delete the following heading and the five rows beneath it in their entirety.]

STD Not Flat-Machinable Pieces 6 Ounces Or More—Nonautomation

* * * * *

PACKAGE SERVICES

* * * * *

[Revise the 18th heading under ''PACKAGE SERVICES'' as follows:]

Combined Package Services, Parcel Select, and Standard—All Parcels

[Revise the 19th heading under ''PACKAGE SERVICES'' as follows:]

Combined Package Services, Parcel Select, and Standard—Irregular Parcels 2 up to 6 oz (APPS-Machinable)

[Revise the 20th (last) heading under ''PACKAGE SERVICES'' as follows:]

Combined PSVC & STD—Irregular Parcels Less Than 2 oz, and Tubes and Rolls (Not APPS-Machinable)

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–32357 Filed 12–20–11; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1234]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive, officer of community	Effective date of modification	Community, No.
Arizona: Maricopa ...	City of Chandler (11–09–2364P).	September 1, 2011; September 8, 2011; *The Arizona Republic*.	The Honorable Jay Tibshraeny, Mayor, City of Chandler, 175 South Arizona Avenue, 5th Floor, Chandler, AZ 85225.	September 18, 2011	040040
Kansas:					
Johnson	City of Roeland Park (11–07–1190P).	October 4, 2011; October 11, 2011; *The Legal Record*.	The Honorable Adrienne Foster, Mayor, City of Roeland Park, City Hall, 4600 West 51st Street, Roeland Park, KS 66205.	February 8, 2012	200176
Johnson	City of Fairway (11–07–1190P).	October 4, 2011; October 11, 2011; *The Legal Record*.	The Honorable Jerry Wiley, Mayor, City of Fairway, 4210 Shawnee Mission Parkway, Suite 100, Fairway, KS 66205.	February 8, 2012	205185
Johnson	City of Mission (11–07–1190P).	October 4, 2011; October 11, 2011; *The Legal Record*.	The Honorable Laura McConwell, Mayor, City of Mission, City Hall, 6090 Woodson Road, Mission, KS 66202.	February 8, 2012	200170
Idaho: Bonneville	Unincorporated areas of Bonneville County (11–10–1238P).	August 30, 2011; September 6, 2011; *The Post Register*.	Mr. Roger Christensen, Bonneville County Commissioner, 605 North Capital Avenue, Idaho Falls, ID 83402.	August 17, 2011	160027
Indiana:					
Marion	City of Beech Grove (11–05–6197P).	October 6, 2011; October 13, 2011; *The Indianapolis Star*.	The Honorable Terry Dilk, Mayor, City of Beech Grove, 806 Main Street, Beech Grove, IN 46107.	February 10, 2012	180158
Lake	City of Hammond (11–05–0942P).	September 9, 2011; September 16, 2011; *The Northwest Indiana Times*.	The Honorable Thomas M. McDermott, Jr., Mayor, City of Hammond, 5925 Calumet Avenue, Hammond, IN 46320.	August 26, 2011	180134
Lake	Town of Highland (11–05–0942P).	September 9, 2011; September 16, 2011; *The Northwest Indiana Times*.	Mr. Brian Novak, President, Town of Highland, 3333 Ridge Road, Highland, IN 46322.	August 26, 2011	185176
Lake	Town of Munster (11–05–0942P).	September 9, 2011; September 16, 2011; *The Northwest Indiana Times*.	Mr. Thomas DeGiulio, Town of Munster Manager, 1005 Ridge Road, Munster, IN 46321.	August 26, 2011	180139
Massachusetts: Plymouth.	Town of Hingham (11–01–0786P).	September 22, 2011; September 29, 2011; *The Hingham Journal*.	Mr. John A. Riley, Town of Hingham Board of Selectmen, Town Hall, 210 Central Street, Hingham, MA 02043.	September 7, 2011	250268
Maine:					
Cumberland	City of Portland (11–01–1058P).	October 11, 2011; October 18, 2011; *The Portland Press Herald*.	The Honorable Nicholas Mavodones, Jr., Mayor, City of Portland, 389 Congress Street, Portland, ME 04101.	September 27, 2011	230051
York	Town of Kittery (10–01–2103P).	September 27, 2011; October 4, 2011; *The Portsmouth Herald*.	Mr. Jonathan Carter, Town of Kittery Manager, 200 Rogers Road Extension, Kittery, ME 03904.	December 26, 2011	230171
New Mexico: Bernalillo.	City of Albuquerque (11–06–0465P).	October 4, 2011; October 11, 2011; *The Albuquerque Journal*.	The Honorable Richard J. Berry, Mayor, City of Albuquerque, 1 Civic Place, Albuquerque, NM 87102.	September 27, 2011	350002
Ohio:					
Franklin	Unincorporated areas of Franklin County (11–05–2052P).	September 7, 2011; September 14, 2011; *The Daily Reporter*.	The Honorable Marilyn Brown, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	January 12, 2012	390167
Franklin	City of Grove City (11–05–2052P).	September 7, 2011; September 14, 2011; *The Daily Reporter*.	The Honorable Richard L. Stage, Mayor, City of Grove City, 4035 Broadway, Grove City, OH 43123.	January 12, 2012	390173
Trumbull	Unincorporated areas of Trumbull County (11–05–6118P).	August 11, 2011; August 18, 2011; *The Tribune Chronicle*.	The Honorable Daniel E. Polivka, President, Trumbull County Commissioners, 160 High Street Northwest, Warren, OH 44481.	July 29, 2011	390535
Trumbull	Village of Lordstown (11–05–6118P).	August 11, 2011; August 18, 2011; *The Tribune Chronicle*.	The Honorable Michael Chaffee, Mayor, Village of Lordstown, 1455 Salt Springs Road, Lordstown, OH 44481.	July 29, 2011	390812
Pennsylvania:					
Adams	Township of Franklin (11–03–0400P).	July 19, 2011; July 26, 2011; *The Gettysburg Times*.	The Honorable Daniel Fetter, Chairman, Township of Franklin Board of Supervisors, 55 Scott School Road, Cashtown, PA 17310.	November 23, 2011	421250
Chester	Town of Caln (11–03–0270P).	August 26, 2011; September 2, 2011; *The Daily Local News*.	The Honorable William Chambers, President, Township of Caln, 253 Municipal Drive, Thorndale, PA 19372.	January 3, 2012	422247

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive, officer of community	Effective date of modification	Community, No.
Delaware	Township of Haverford (11–03–1170P).	August 3, 2011; August 10, 2011; *The Daily Times*.	The Honorable William F. Wechsler, President, Township of Haverford Board of Commissioners, 2325 Darby Road, Havertown, PA 19083.	December 8, 2011	420417
Montgomery	Township of Lower Merion (10–03–0696P).	September 15, 2011; September 22, 2011; *The Main Line Times*.	The Honorable Elizabeth S. Rogan, President, Township of Lower Merion Board of Commissioners, 75 East Lancaster Avenue, Ardmore, PA 19003.	December 30, 2010	420701
Puerto Rico: Puerto Rico.	Commonwealth of Puerto Rico (10–02–1774P).	August 9, 2011; August 16, 2011; *El Nuevo Dia*.	The Honorable Luis G. Fortuño, Governor, Commonwealth of Puerto Rico, Calle Fortaleza #63, San Juan, PR 00901.	August 2, 2011	720000
Texas:					
Bell	City of Temple (10–06–3631P).	September 27, 2011; October 4, 2011; *The Temple Daily Telegram*.	The Honorable William A. Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	February 1, 2012	480034
Bexar	City of San Antonio (11–06–1217P).	September 27, 2011; October 4, 2011; *The San Antonio Express-News*.	The Honorable Julián Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	September 20, 2011	480045
Bexar	City of San Antonio (11–06–1853P).	October 6, 2011; October 13, 2011; *The San Antonio Express-News*.	The Honorable Julián Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	February 10, 2012	480045
Collin	City of McKinney (11–06–0938P).	October 5, 2011; October 12, 2011; *The McKinney Courier-Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	February 9, 2012	480135
Collin	City of Richardson (11–06–2276P).	October 4, 2011; October 11, 2011; *The Dallas Morning News*.	The Honorable Bob Townsend, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75080.	February 8, 2012	480184
Johnson and Tarrant.	City of Burleson (11–06–2791P).	October 12, 2011; October 19, 2011; *The Burleson Star*.	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	February 16, 2012	485459
Medina	City of Castroville (11–06–0606P).	October 6, 2011; October 13, 2011; *The Castroville News Bulletin*.	The Honorable Robert Lee, Mayor, City of Castroville, 1209 Fiorella Street, Castroville, TX 78009.	October 28, 2011	480932
Montgomery	City of Montgomery (10–06–1397P).	October 4, 2011; October 11, 2011; *The Conroe Courier*.	The Honorable John Fox, Mayor, City of Montgomery, 101 Old Plantersville Road, Montgomery, TX 77356.	October 27, 2011	481483
Tarrant	City of Arlington (10–06–3532P).	September 2, 2011; September 9, 2011; *The Fort Worth Star-Telegram*.	The Honorable Dr. Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	January 9, 2012	485454
Tarrant	City of Arlington (10–06–3286P).	September 15, 2011; September 22, 2011; *The Fort Worth Star-Telegram*.	The Honorable Dr. Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	January 20, 2012	485454
Tarrant	City of Dalworthington Gardens (10–06–3532P).	September 2, 2011; September 9, 2011; *The Fort Worth Star-Telegram*.	The Honorable Michael R. Tedder, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, TX 76016.	January 9, 2012	481013
Tarrant	City of Fort Worth (11–06–2791P).	October 12, 2011; October 19, 2011; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 16, 2012	480596
Tarrant	City of White Settlement (11–06–1375P).	September 28, 2011; October 5, 2011; *The Grizzly Detail Newspaper*.	The Honorable Jerry R. Burns, Mayor, City of White Settlement, 214 Meadow Park Drive, White Settlement, TX 76108.	September 21, 2011	480617
Virginia:					
Fauquier	Unincorporated areas of Fauquier County (11–03–0275P).	July 27, 2011; August 3, 2011; *The Fauquier Times-Democrat*.	The Honorable Raymond E. Graham, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	December 1, 2011	510055
Loudoun	Unincorporated areas of Loudoun County (10–03–0387P).	October 27, 2010; November 3, 2010; *The Loudoun Times-Mirror*.	The Honorable Scott K. York, Chairman at Large, Loudoun County Board of Supervisors, 1 Harrison Street Southeast, 5th Floor, Leesburg, VA 20177.	October 19, 2010	510090
Prince William	Unincorporated areas of Prince William County (11–03–0494P).	September 14, 2011; September 21, 2011; *The News & Messenger*.	The Honorable Corey A. Stewart, Chairman at Large, Prince William County Board of Supervisors, 1 County Complex Court, Prince William, VA 22192.	January 19, 2012	510119
Wisconsin: Brown	Unincorporated areas of Brown County (11–05–2704P).	September 15, 2011; September 22, 2011; *The Greenbay Press-Gazette*.	The Honorable Guy Zima, Chairman, Brown County Board, 305 East Walnut Street, Green Bay, WI 54301.	January 20, 2012	550020

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 5, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–32596 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1211).	City of Gulf Shores (11–04–1670P).	June 10, 2011; June 17, 2011; *The Islander.*	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, 1905 West 1st Street, Gulf Shores, AL 36547.	June 6, 2011	015005
Shelby (FEMA Docket No.: B–1206).	City of Montevallo (10–04–6506P).	May 25, 2011; June 1, 2011; *The Shelby County Reporter.*	The Honorable Ben McCrory, Mayor, City of Montevallo, 545 South Main Street, Montevallo, AL 35115.	September 29, 2011	010349
Arizona:					
Coconino (FEMA Docket No.: B–1195).	City of Page (10–09–3257P).	March 4, 2011; March 11, 2011; *The Arizona Daily Sun.*	The Honorable Lyle Dimbatt, Mayor, City of Page, 697 Vista Avenue, Page, AZ 86040.	July 11, 2011	040113

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Coconino (FEMA Docket No.: B–1195).	Unincorporated areas of Coconino County (10–09–3257P).	March 4, 2011; March 11, 2011; *The Arizona Daily Sun*.	The Honorable Mandy Metzger, Chair, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, AZ 86001.	July 11, 2011	040019
Maricopa (FEMA Docket No.: B–1206).	City of El Mirage (11–09–0216P).	May 12, 2011; May 19, 2011; *The Arizona Business Gazette*.	The Honorable Lana Mook, Mayor, City of El Mirage, 12145 Northwest Grande Avenue, El Mirage, AZ 85335.	September 16, 2011	040041
Maricopa (FEMA Docket No.: B–1206).	Unincorporated areas of Maricopa County (11–09–0216P).	May 12, 2011; May 19, 2011; *The Arizona Business Gazette*.	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	September 16, 2011	040037
Arkansas:					
Washington (FEMA Docket No.: B–1203).	City of Fayetteville (10–06–1619P).	December 1, 2010; December 7, 2010; *The Northwest Arkansas Times*.	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	April 6, 2011	050216
California:					
Orange (FEMA Docket No.: B–1195).	City of Orange (10–09–3115P).	March 21, 2011; March 28, 2011; *The Orange County Register*.	The Honorable Carolyn V. Cavecche, Mayor, City of Orange, 300 East Chapman Avenue, Orange, CA 92866.	April 15, 2011	060228
Riverside (FEMA Docket No.: B–1195).	Unincorporated areas of Riverside County (10–09–2063P).	March 18, 2011; March 25, 2011; *The Press-Enterprise*.	The Honorable Bob Buster, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, Riverside, CA 92502.	July 25, 2011	060245
San Benito (FEMA Docket No.: B–1195).	City of Hollister (10–09–2357P).	March 8, 2011; March 15, 2011; *The Free Lance*.	The Honorable Victor Gomez, Mayor, City of Hollister, 375 5th Street, Hollister, CA 95023.	July 13, 2011	060268
San Benito (FEMA Docket No.: B–1195).	Unincorporated areas of San Benito County (10–09–2357P).	March 8, 2011; March 15, 2011; *The Free Lance*.	The Honorable Anthony Botelho, Chairman, San Benito County Board of Supervisors, 481 4th Street, 1st Floor, Hollister, CA 95023.	July 13, 2011	060267
San Diego (FEMA Docket No.: B–1206).	City of San Diego (11–09–0120P).	May 6, 2011; May 13, 2011; *The San Diego Daily Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	September 12, 2011	060295
Ventura (FEMA Docket No.: B–1195).	City of Simi Valley (10–09–3242P).	March 9, 2011; March 16, 2011; *The Ventura County Star*.	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	July 14, 2011	060421
Ventura (FEMA Docket No.: B–1206).	City of Simi Valley (11–09–2030P).	May 6, 2011; May 13, 2011; *The Ventura County Star*.	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	September 12, 2011	060421
Colorado:					
Arapahoe (FEMA Docket No.: B–1195).	City of Littleton (11–08–0082P).	March 18, 2011; March 25, 2011; *The Denver Post*.	The Honorable Doug Clark, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, CO 80165.	April 14, 2011	080017
Arapahoe (FEMA Docket No.: B–1195).	Town of Columbine Valley (11–08–0082P).	March 18, 2011; March 25, 2011; *The Denver Post*.	The Honorable Gale Christy, Mayor, Town of Columbine Valley, 2 Middlefield Road, Columbine Valley, CO 80123.	April 14, 2011	080014
Arapahoe (FEMA Docket No.: B–1195).	Unincorporated areas of Arapahoe County (11–08–0082P).	March 18, 2011; March 25, 2011; *The Denver Post*.	The Honorable Rod Bockenfeld, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	April 14, 2011	080011
Boulder (FEMA Docket No.: B–1206).	City of Boulder (10–08–0754P).	May 3, 2011; May 10, 2011; *The Camera*.	The Honorable Susan Osborne, Mayor, City of Boulder, City Council Office, 1777 Broadway Street, Boulder, CO 80302.	September 7, 2011	080024
Boulder (FEMA Docket No.: B–1206).	Unincorporated areas of Boulder County (10–08–0754P).	May 3, 2011; May 10, 2011; *The Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, 1325 Pearl Street, 3rd Floor, Boulder, CO 80302.	September 7, 2011	080023
Rio Blanco (FEMA Docket No.: B–1206).	Town of Meeker (11–08–0007P).	April 28, 2011; May 5, 2011; *The Rio Blanco Herald Times*.	The Honorable Mandi Etheridge, Mayor, Town of Meeker, 345 Market Street, Meeker, CO 81641.	September 2, 2011	080151
Rio Blanco (FEMA Docket No.: B–1206).	Unincorporated areas of, Rio Blanco County (11–08–0007P).	April 28, 2011; May 5, 2011; *The Rio Blanco Herald Times*.	The Honorable Kai Turner, Chairman, Rio Blanco County Board of Commissioners, 200 Main Street, Suite 100, Meeker, CO 81641.	September 2, 2011	080288
Rio Blanco (FEMA Docket No.: B–1206).	Unincorporated areas of, Rio Blanco County (11–08–0049P).	May 5, 2011; May 12, 2011; *The Rio Blanco Herald Times*.	The Honorable Kai Turner, Chairman, Rio Blanco County Board of County Commissioners, 200 Main Street, Suite 100, Meeker, CO 81641.	September 9, 2011	080288
Routt (FEMA Docket No.: B–1199).	City of Steamboat Springs (11–08–0283P).	May 1, 2011; May 8, 2011; *The Steamboat Pilot & Today*.	Mr. Jon B. Roberts, City of Steamboat Springs Manager, 137 10th Street, Steamboat Springs, CO 80477.	September 6, 2011	080159
Summit (FEMA Docket No.: B–1191).	Town of Breckenridge (10–08–0858P).	February 25, 2011; March 4, 2011; *The Summit County Journal*.	The Honorable John Warner, Mayor, Town of Breckenridge, 150 Ski Hill Road, Breckenridge, CO 80424.	July 5, 2011	080172

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Summit (FEMA Docket No.: B–1191).	Unincorporated areas of Summit County (10–08–0858P).	February 25, 2011; March 4, 2011; *The Summit County Journal*.	The Honorable Karn Stiegelmeier, Chair, Summit County Board of Commissioners, 208 East Lincoln Avenue, Breckenridge, CO 80424.	July 5, 2011	080290
Delaware:					
New Castle (FEMA Docket No.: B–1201).	Town of Odessa (11–03–0744P).	March 31, 2011; April 7, 2011; *The Middletown Transcript*.	The Honorable Kathy Harvey, Mayor, Town of Odessa, 315 Main Street, Odessa, DE 19730.	August 5, 2011	100066
New Castle (FEMA Docket No.: B–1201).	Unincorporated areas of New Castle County (10–03–1927P).	January 7, 2011; January 14, 2011; *The News Journal*.	The Honorable Paul G. Clark, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	May 16, 2011	105085
Florida:					
Bay (FEMA Docket No.: B–1211).	City of Panama City (11–04–5514P).	June 16, 2011; June 23, 2011; *The News Herald*.	The Honorable Gregory Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	June 9, 2011	120012
Charlotte (FEMA Docket No.: B–1206).	Unincorporated areas of Charlotte County (11–04–4544P).	May 31, 2011; June 7, 2011; *The Charlotte Sun*.	The Honorable Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	May 25, 2011	120061
Duval (FEMA Docket No.: B–1195).	City of Jacksonville (11–04–3277P).	March 18, 2011; March 25, 2011; *The Jacksonville Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	March 14, 2011	120077
Escambia (FEMA Docket No.: B–1219).	Unincorporated areas of Escambia County (11–04–2176P).	June 16, 2011; June 23, 2011; *The Pensacola News Journal*.	The Honorable Kevin White, Chairman, Escambia County Board of Commissioners, 221 Palafox Place, Suite 420, Pensacola, FL 32502.	June 9, 2011	120080
Miami-Dade (FEMA Docket No.: B–1206).	City of Sweetwater (11–04–3782P).	June 1, 2011; June 8, 2011; *The Miami Daily Business Review*.	The Honorable Manuel M. Maroño, Mayor, City of Sweetwater, 500 Southwest 109th Avenue, Sweetwater, FL 33174.	May 25, 2011	120660
Monroe (FEMA Docket No.: B–1206).	Unincorporated areas of Monroe County (11–04–3523P).	May 31, 2011; June 7, 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 530 Whitehead Street, Key West, FL 33040.	May 25, 2011	125129
Sarasota (FEMA Docket No.: B–1211).	City of Sarasota (11–04–4005P).	June 16, 2011; June 23, 2011; *The Sarasota Herald-Tribune*.	The Honorable Suzanne Atwell, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	June 9, 2011	125150
Sarasota (FEMA Docket No.: B–1195).	Unincorporated areas of Sarasota County (11–04–1370P).	March 16, 2011; March 23, 2011; *The Sarasota Herald-Tribune*.	The Honorable Nora Patterson, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	July 21, 2011	125144
Wakulla (FEMA Docket No.: B–1195).	Unincorporated areas of Wakulla County (10–04–8135P).	March 31, 2011; April 7, 2011; *The Wakulla News*.	The Honorable Mike Stewart, Chair, Wakulla County Board of Commissioners, 3093 Crawfordville Highway, Crawfordville, FL 32327.	March 25, 2011	120315
Georgia:					
Fulton (FEMA Docket No.: B–1195).	City of East Point (09–04–8416P).	March 7, 2011; March 14, 2011; *The Daily Report*.	Mr. Crandall O. Jones, City of East Point Manager, 2777 East Point Street, East Point, GA 30344.	July 12, 2011	130087
Muscogee (FEMA Docket No.: B–1211).	City of Columbus-Muscogee County (Consolidated Government) (11–04–4624P).	June 8, 2011; June 15, 2011; *The Columbus Ledger-Enquirer*.	The Honorable Teresa Tomlinson, Mayor, City of Columbus-Muscogee County Consolidated Government, 100 10th Street, Columbus, GA 31901.	May 31, 2011	135158
Troup (FEMA Docket No.: B–1195).	City of LaGrange (10–04–5810P).	March 11, 2011; March 18, 2011; *The LaGrange Daily News*.	The Honorable Jeff Lukken, Mayor, City of LaGrange, 200 Ridley Avenue, LaGrange, GA 30240.	July 18, 2011	130177
Hawaii:					
Honolulu (FEMA Docket No.: B–1195).	City and County of Honolulu (11–09–0171P).	March 25, 2011; April 1, 2011; *The Honolulu Star-Advertiser*.	The Honorable Peter B. Carlisle, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, HI 96813.	March 21, 2011	150001
New Mexico:					
Bernalillo (FEMA Docket No.: B–1203).	Unincorporated areas of Bernalillo County (10–06–1669P).	May 5, 2011; May 12, 2011; *The Albuquerque Journal*.	The Honorable Maggie Hart Stebbins, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	March 23, 2011	350001
Sandoval (FEMA Docket No.: B–1203).	City of Rio Rancho (10–06–2588P).	January 26, 2011; February 2, 2011; *The Rio Rancho Observer*.	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	June 2, 2011	350146
Santa Fe (FEMA Docket No.: B–1201).	City of Santa Fe (10–06–2026P).	March 3, 2011; March 10, 2011; *The Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, 200 Lincoln Avenue, Santa Fe, NM 87504.	February 24, 2011	350070
North Carolina:					
Columbus (FEMA Docket No.: B–1199).	Unincorporated areas of Columbus County (10–04–6815P).	April 7, 2011; April 14, 2011; *The News Reporter*.	Mr. Giles E. Byrd, Chairman, Columbus County Board of Commissioners, 112 West Smith Street, Whiteville, NC 28472.	August 12, 2011	370305

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Durham (FEMA Docket No.: B–1199).	City of Durham (10–04–4374P).	March 30, 2011; April 6, 2011; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	August 4, 2011	370086
Oklahoma:					
Cleveland (FEMA Docket No.: B–1205).	City of Moore (10–06–2515P).	December 17, 2010; December 24, 2010; *The Norman Transcript*.	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway Street, Moore, OK 73160.	April 25, 2011	400044
Cleveland (FEMA Docket No.: B–1205).	Unincorporated areas of Cleveland County (10–06–2515P).	December 17, 2010; December 24, 2010; *The Norman Transcript*.	Mr. Rusty Sullivan, Cleveland County Commissioner, 201 South Jones Avenue, Norman, OK 73069.	April 25, 2011	400475
Kay (FEMA Docket No.: B–1201).	City of Ponca City (10–06–2643P).	March 14, 2011; March 21, 2011; *The Ponca City News*.	The Honorable Homer Nicholson, Mayor, City of Ponca City, 516 East Grand Avenue, Ponca City, OK 74601.	July 19, 2011	400080
Oklahoma (FEMA Docket No.: B–1205).	City of Edmond (10–06–0168P).	February 22, 2011; March 1, 2011; *The Edmond Sun*.	The Honorable Charles Lamb, Mayor Pro Tem, City of Edmond, 24 East 1st Street, Edmond, OK 73083.	June 29, 2011	400252
Oklahoma (FEMA Docket No.: B–1201).	City of Oklahoma City (10–06–1884P).	March 30, 2011; April 6, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	July 28, 2011	405378
Oklahoma (FEMA Docket No.: B–1203).	City of Oklahoma City (11–06–0387P).	May 3, 2011; May 10, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	September 7, 2011	405378
Osage and Tulsa (FEMA Docket No.: B–1201).	Town of Skiatook (10–06–0568P).	February 23, 2011; March 2, 2011; *The Skiatook Journal*.	The Honorable Steve Kendrick, Mayor, Town of Skiatook, 110 North Broadway Street, Skiatook, OK 74070.	June 30, 2011	400212
Tulsa (FEMA Docket No.: B–1205).	City of Tulsa (10–06–2732P).	December 7, 2010; December 14, 2010; *The Tulsa World*.	The Honorable Dewey F. Bartlett, Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	April 13, 2011	405381
Tulsa (FEMA Docket No.: B–1201).	Unincorporated areas of Tulsa County (10–06–1294P).	March 23, 2011; March 30, 2011; *The Tulsa World*.	The Honorable Fred Perry, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue West, Tulsa, OK 74103.	April 18, 2011	400462
Pennsylvania:					
McKean (FEMA Docket No.: B–1201).	Borough of Port Allegany (10–03–1879P).	March 24, 2011; March 31, 2011; *The Reporter Argus*.	The Honorable Donald G. Carley, Mayor, Borough of Port Allegany, 45 West Maple Street, Port Allegany, PA 16743.	April 18, 2011	420671
McKean (FEMA Docket No.: B–1201).	Township of Liberty (10–03–1879P).	March 24, 2011; March 31, 2011; *The Reporter Argus*.	The Honorable Gary L. Turner, Chairman, Township of Liberty Board of Supervisors, 21514 U.S. Route 6, Port Allegany, PA 16743.	April 18, 2011	420668
South Carolina:					
Richland (FEMA Docket No.: B–1211).	Unincorporated areas of Richland County (11–04–1879P).	May 6, 2011; May 13, 2011; *The Columbia Star*.	The Honorable Paul Livingston, Chairman, Richland County Council, 2020 Hampton Street, 2nd Floor, Columbia, SC 29202.	September 12, 2011	450170
Texas:					
Bell (FEMA Docket No.: B–1205).	City of Temple (10–06–1855P).	May 4, 2011; May 11, 2011; *The Temple Daily Telegram*.	The Honorable William A. Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	September 8, 2011	480034
Bexar (FEMA Docket No.: B–1201).	City of San Antonio (09–06–3178P).	April 6, 2011; April 13, 2011; *The Hart Beat*.	The Honorable Julian Castro, Mayor, City of San Antonio, 103 Main Plaza, San Antonio, TX 78283.	March 30, 2011	480045
Bexar (FEMA Docket No.: B–1201).	City of San Antonio (10–06–1080P).	February 11, 2011; February 18, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, 103 Main Plaza, San Antonio, TX 78283.	February 4, 2011	480045
Bexar (FEMA Docket No.: B–1201).	City of San Antonio (10–06–3684P).	April 6, 2011; April 13, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, 103 Main Plaza, San Antonio, TX 78283.	August 11, 2011	480045
Bexar (FEMA Docket No.: B–1201).	City of Selma (09–06–3178P).	April 6, 2011; April 13, 2011; *The Hart Beat*.	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	March 30, 2011	480046
Brazos (FEMA Docket No.: B–1203).	City of College Station (10–06–1996P).	November 24, 2010; December 1, 2010; *The Eagle*.	The Honorable Nancy Berry, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	March 30, 2011	480083
Brazos (FEMA Docket No.: B–1205).	City of College Station (10–06–2875P).	May 9, 2011; May 16, 2011; *The Eagle*.	The Honorable Nancy Berry, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	September 13, 2011	480083
Brazos (FEMA Docket No.: B–1205).	City of College Station (10–06–0657P).	May 11, 2011; May 18, 2011; *The Eagle*.	The Honorable Nancy Berry, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	September 15, 2011	480083
Brazos (FEMA Docket No.: B–1205).	Unincorporated areas of Brazos County (10–06–2875P).	May 9, 2011; May 16, 2011; *The Eagle*.	The Honorable Duane Peters, Brazos County Judge, 200 South Texas Avenue, Suite 332, Bryan, TX 77803.	September 13, 2011	481195

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Cherokee (FEMA Docket No.: B–1205).	City of Jacksonville (10–06–2294P).	December 17, 2010; December 24, 2010; *The Jacksonville Daily Progress*.	The Honorable Kenneth Melvin, Mayor, City of Jacksonville, 2107 Baylor Street, Jacksonville, TX 75766.	November 29, 2010	480123
Collin (FEMA Docket No.: B–1201).	City of Frisco (11–06–1691P).	April 1, 2011; April 8, 2011; *The Frisco Enterprise*.	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	March 25, 2011	480134
Collin (FEMA Docket No.: B–1205).	City of McKinney (10–06–3483P).	May 12, 2011; May 19, 2011; *The McKinney Courier-Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	June 6, 2011	480135
Comal (FEMA Docket No.: B–1203).	City of New Braunfels (10–06–0915P).	December 29, 2010; January 5, 2011; *The New Braunfels Herald-Zeitung*.	The Honorable R. Bruce Boyer, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	December 21, 2010	485493
Dallas (FEMA Docket No.: B–1201).	City of Dallas (10–06–2771P).	March 28, 2011; April 4, 2011; *The Dallas Morning News*.	The Honorable Dwaine Caraway, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	April 20, 2011	480171
Dallas (FEMA Docket No.: B–1201).	City of Garland (10–06–1854P).	March 31, 2011; April 7, 2011; *The Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75046.	August 5, 2011	485471
Dallas (FEMA Docket No.: B–1205).	City of Richardson (10–06–3057P).	March 15, 2011; March 22, 2011; *The Dallas Morning News*.	The Honorable Gary Slagel, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75083.	April 6, 2011	480184
Dallas (FEMA Docket No.: B–1201).	City of Richardson (10–06–3245P).	April 5, 2011; April 12, 2011; *The Dallas Morning News*.	The Honorable Gary Slagel, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75083.	August 10, 2011	480184
Dallas (FEMA Docket No.: B–1201).	City of Rowlett (10–06–1854P).	March 31, 2011; April 7, 2011; *The Dallas Morning News*.	The Honorable John E. Harper, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	August 5, 2011	480185
Denton (FEMA Docket No.: B–1201).	City of Denton (11–06–0102P).	March 22, 2011; March 29, 2011; *The Denton Record-Chronicle*.	The Honorable Mark Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	July 27, 2011	480194
Denton (FEMA Docket No.: B–1206).	City of Lewisville (10–06–3039P).	May 26, 2011; June 2, 2011; *The Denton Record-Chronicle*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	June 20, 2011	480195
Denton (FEMA Docket No.: B–1201).	Unincorporated areas of Denton County (10–06–3227P).	March 9, 2011; March 16, 2011; *The Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	July 14, 2011	480774
El Paso (FEMA Docket No.: B–1205).	City of El Paso (10–06–2130P).	February 1, 2011; February 8, 2011; *The El Paso Times*.	The Honorable John F. Cook, Mayor, City of El Paso, 2 Civic Center Plaza, El Paso, TX 79901.	June 8, 2011	480214
El Paso (FEMA Docket No.: B–1205).	City of El Paso (10–06–3638P).	May 20, 2011; May 27, 2011; *The El Paso Times*.	The Honorable John F. Cook, Mayor, City of El Paso, 2 Civic Center Plaza, El Paso, TX 79901.	May 13, 2011	480214
Fort Bend (FEMA Docket No.: B–1203).	Unincorporated areas of Fort Bend County (11–06–1803P).	April 13, 2011; April 20, 2011; *The Fort Bend Independent*.	The Honorable Robert Hebert, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	March 30, 2011	480228
Fort Bend and Waller (FEMA Docket No.: B–1201).	City of Katy (10–06–2439P).	March 3, 2011; March 10, 2011; *The Katy Times* and *The Waller County News Citizen*.	The Honorable Don Elder, Jr., Mayor, City of Katy, 901 Avenue C, Katy, TX 77493.	July 8, 2011	480301
Guadalupe (FEMA Docket No.: B–1201).	City of Cibolo (10–06–3676P).	April 7, 2011; April 14, 2011; *The Seguin Gazette*.	The Honorable Jennifer Hartman, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	August 12, 2011	480267
Kaufman (FEMA Docket No.: B–1201).	City of Forney (10–06–1509P).	January 20, 2011; January 27, 2011; *The Forney Messenger*.	The Honorable Darren Rozell, Mayor, City of Forney, 101 East Main Street, Forney, TX 75126.	July 4, 2011	480410
Montgomery (FEMA Docket No.: B–1205).	City of Montgomery (10–06–2378P).	May 13, 2011; May 20, 2011; *The Conroe Courier*.	The Honorable Travis M. Mabry, Mayor, City of Montgomery, 101 Old Plantersville Road, Montgomery, TX 77356.	September 19, 2011	481483
Montgomery (FEMA Docket No.: B–1205).	Unincorporated areas of Montgomery County (10–06–2378P).	May 13, 2011; May 20, 2011; *The Conroe Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson, Suite 401, Conroe, TX 77301.	September 19, 2011	480483
Travis (FEMA Docket No.: B–1201).	City of Austin (10–06–1285P).	December 30, 2010; January 6, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, 301 West 2nd Street, 2nd Floor, Austin, TX 78767.	December 23, 2010	480624
Travis (FEMA Docket No.: B–1205).	City of Austin (10–06–1794P).	January 19, 2011; January 26, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, 301 West 2nd Street, 2nd Floor, Austin, TX 78767.	May 20, 2011	480624
Travis (FEMA Docket No.: B–1201).	City of Austin (10–06–2352P).	April 6, 2011; April 13, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, 301 West 2nd Street, 2nd Floor, Austin, TX 78767.	August 11, 2011	480624
Travis (FEMA Docket No.: B–1205).	Unincorporated areas of Travis County (10–06–1794P).	January 19, 2011; January 26, 2011; *The Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	May 20, 2011	481026

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Waller (FEMA Docket No.: B–1201).	Unincorporated areas of Waller County (10–06–2439P).	March 3, 2011; March 10, 2011; *The Katy Times* and *The Waller County News Citizen*.	The Honorable Glenn Beckendorff, Waller County Judge, 836 Austin Street, Suite 203, Hempstead, TX 77445.	July 8, 2011	480640
Wichita (FEMA Docket No.: B–1203).	City of Wichita Falls (10–06–2494P).	January 25, 2011; February 1, 2011; *The Times Record News*.	The Honorable Glenn Barham, Mayor, City of Wichita Falls, 1300 7th Street, Wichita Falls, TX 76307.	June 1, 2011	480662
Williamson (FEMA Docket No.: B–1201).	City of Cedar Park (10–06–2438P).	November 11, 2010; November 18, 2010; *The Hill Country News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	March 18, 2011	481282
Williamson (FEMA Docket No.: B–1201).	City of Leander (09–06–3213P).	January 27, 2011; February 3, 2011; *The Leander Ledger*.	The Honorable John Cowman, Mayor, City of Leander, 200 West Willis Street, Leander, TX 78646.	June 3, 2011	481536
Utah:					
Washington (FEMA Docket No.: B–1211).	City of St. George (11–08–0214P).	May 31, 2011; June 7, 2011; *The Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	May 24, 2011	490177
Washington (FEMA Docket No.: B–1211).	Unincorporated areas of Washington County (11–08–0214P).	May 31, 2011; June 7, 2011; *The Spectrum*.	The Honorable Dennis B. Drake, Chairman, Washington County Board of Commissioners, 197 East Tabernacle Street, St. George, UT 84770.	May 24, 2011	490224
Virginia:					
Frederick (FEMA Docket No.: B–1201).	Unincorporated areas of Frederick County (11–03–0191P).	December 28, 2010; January 4, 2011; *The Winchester Star*.	The Honorable Richard C. Shickle, Chairman-at-Large, Frederick County Board of Supervisors, 292 Green Spring Road, Winchester, VA 22603.	May 4, 2011	510063
Wyoming:					
Sweetwater (FEMA Docket No.: B–1195).	City of Rock Springs (10–08–0509P).	March 22, 2011; March 29, 2011; *The Rocket-Miner*.	The Honorable Carl Demshar, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901.	July 27, 2011	560051

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 5, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–32597 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that

have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Butte-Silver Bow County, Montana Docket No. FEMA–B–1149				
Montana	Unincorporated Areas of Butte-Silver Bow County.	Basin Creek	Approximately 1,000 feet upstream of I–90.	+5469
			Approximately 40 feet downstream of Mormon Church Road.	+5494
Montana	Unincorporated Areas of Butte-Silver Bow County.	Sand Creek	Approximately 90 feet downstream of Evans Avenue.	+5456
			Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	+5547
Montana	Unincorporated Areas of Butte-Silver Bow County.	Sand Creek Diversion	Approximately 500 feet upstream of Elizabeth Warren Avenue.	+5484
			Approximately 100 feet downstream of Harrison Avenue.	+5514

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Butte-Silver Bow County

Maps are available for inspection at 155 West Granite Street, Room 108, Butte, MT 59701.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Fremont County, Colorado, and Incorporated Areas Docket No. FEMA–B–1152			
Arkansas River	Approximately 600 feet upstream of the confluence with Coal Creek East Overflow.	+5129	City of Florence, Unincorporated Areas of Fremont County.
	Approximately 1,330 feet downstream of Minnequa Dam Road.	+5206	
Coal Creek	Approximately 0.99 mile upstream of Railroad Street	+5222	City of Florence, Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 0.57 mile upstream of Coal Creek Drive	+5435	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Coal Creek Tributary 1	At the confluence with Coal Creek	+5335	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 1,600 feet upstream of Main Street	+5420	
Coal Creek Tributary 2	Just upstream of the confluence with Coal Creek	+5400	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 0.75 mile upstream of the confluence with Coal Creek.	+5489	
Coal Creek Tributary 3	Just upstream of the confluence with Coal Creek	+5422	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 1,100 feet upstream of the confluence with Coal Creek.	+5440	
Forked Gulch	Approximately 300 feet upstream of the confluence with the Arkansas River.	+5336	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 275 feet upstream of North Eagle Drive	+5888	
Oak Creek	Just upstream of the unnamed railroad	+5253	Town of Rockvale, Town of Williamsburg, Unincorporated Areas of Fremont County.
	Approximately 1,350 feet upstream of Mesa Avenue	+5471	
South Oak Creek	Just upstream of the confluence with Oak Creek	+5424	Town of Rockvale, Unincorporated Areas of Fremont County.
	Approximately 580 feet upstream of Oak Creek Avenue	+5438	
West Branch Forked Gulch	Approximately 90 feet upstream of Temple Canyon Road	+5473	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 525 feet upstream of Lela Lane	+6082	
West Oak Creek	Just upstream of the confluence with Oak Creek	+5268	Town of Rockvale, Town of Williamsburg, Unincorporated Areas of Fremont County.
	Approximately 0.87 mile upstream of Smith Gulch Road	+5534	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Canon City
Maps are available for inspection at 128 Main Street, Canon City, CO 81212.

City of Florence
Maps are available for inspection at 300 West Main Street, Florence, CO 81226.

Town of Coal Creek
Maps are available for inspection at 400 Railroad Street, Coal Creek, CO 81221.

Town of Rockvale
Maps are available for inspection at 510 Railroad Street, Rockvale, CO 81244.

Town of Williamsburg
Maps are available for inspection at 1 John Street, Williamsburg, CO 81226.

Unincorporated Areas of Fremont County
Maps are available for inspection at 615 Macon Avenue, Canon City, CO 81212.

Mason County, Illinois, and Incorporated Areas
Docket Nos. FEMA–B–1061 and FEMA–B–1093

Illinois River	Approximately 0.2 mile upstream of 750 North extended	+452	Unincorporated Areas of Mason County.
	Approximately 0.74 mile upstream of Walnut Street extended.	+452	
	Approximately 0.12 mile upstream of 2500 North extended.	+454	
	Approximately 0.1 mile upstream of 2600 North	+454	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sangamon River	Approximately 0.15 mile upstream of County Road 800 E	+456	Unincorporated Areas of Mason County.
	Approximately 0.3 mile upstream of State Highway 78	+461	
Ponding	North boundary: Private drive approximately 230 feet north of north entrance to Linwood Lake Estates Road/East boundary: Abandoned road approximately 660 feet west of State Highway 78/South boundary: Private drive approximately 665 feet north of beginning of North Elm Street/West boundary: State Highway 78.	+466	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 2,470 feet north of County Highway 1/East boundary: Approximately 0.86 mile east of Olive Street along County Highway 1/South boundary: 385 feet south of County Highway 1/West boundary: Approximately 0.49 mile east of Olive Street along County Highway 1.	+471	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,300 feet south of County Highway 1/East boundary: Approximately 0.54 mile east of southeastern tip of East Main Street/South boundary: Approximately 0.72 mile south of County Highway 1/West boundary: Approximately 300 feet east of southeastern tip of East Main Street.	+472	Unincorporated Areas of Mason County.
Ponding	North boundary: 330 feet south of B Street along State Highway 78/East boundary: At State Highway 78/South boundary: Approximately 810 feet south of B Street along State Highway 78/West boundary: 425 feet west of State Highway 78.	+465	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,030 feet north of East 800 North Road along North 1100 East Road/East boundary: Approximately 930 feet east of North 1100 East Road/South boundary: Approximately 1,580 feet south of intersection of East 800 North Road and North 1100 East Road/West boundary: Approximately 1,950 feet east of State Highway 78.	+465	Unincorporated Areas of Mason County.
Ponding	North boundary: At East 800 North Road/East boundary: Approximately 1,380 feet east of State Highway 78/South boundary: Approximately 275 feet north of East 750 North Road/West boundary: At State Highway 78.	+462	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 430 feet north of Mason Street/East boundary: Approximately 310 feet west of William Boulevard/South boundary: At Mason Street/West boundary: At Mason Street and railroad crossing.	+468	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 240 feet north of Mason Street/East boundary: Approximately 0.59 mile west of North 1800 East Road/South boundary: Approximately 1,090 feet north of U.S. Route 136/West boundary: Approximately 1,050 feet east of William Boulevard.	+472	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 125 feet south of Hillcrest Court extended/East boundary: At railroad/South boundary: Approximately 500 feet south of Hillcrest Court extended/West boundary: Approximately 75 feet west of railroad.	+476	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 970 feet south of State Highway 97 railroad crossing/East boundary: Approximately 480 feet from end of Hillcrest Court/South boundary: Approximately 1,550 feet south of State Highway 97 railroad crossing/West boundary: At railroad.	+476	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 0.51 mile north of East 1500 North Road/East boundary: Approximately 140 feet west of State Highway 97/South boundary: Approximately 0.47 mile north of East 1500 North Road/West boundary: Approximately 465 feet west of State Highway 97.	+476	Unincorporated Areas of Mason County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Ponding	North boundary: Approximately 1,470 feet north of East 1500 North Road/East boundary: Approximately 0.6 mile west of North 1800 East Road/South boundary: Approximately 940 feet south of intersection of State Highway 97 and East 1500 North Road/West boundary: Approximately 625 feet west of intersection of State Highway 97 and East 1500 North Road.	+480	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 0.68 mile north of East 1500 North Road/East boundary: Approximately 0.41 mile west of North 1800 East Road/South boundary: Approximately 250 feet south of East 1500 North Road/West boundary: Approximately 1,460 feet west of State Highway 97.	+480	Unincorporated Areas of Mason County.
Ponding	North boundary: Private drive approximately 665 feet north of beginning of North Elm Street/East boundary: Approximately 1,000 feet east of Vine Street/South boundary: Approximately 315 feet north of East 800 North Road/west boundary: Approximately at State Highway 78.	+463	Village of Bath.
Ponding	North boundary: Approximately 250 feet south of County Highway 1/East boundary: Approximately 1,950 feet east of intersection of Olive Street and Cedar Street/South boundary: Approximately 2,000 feet south of intersection of Hickory Street and Main Street/West boundary: 980 feet east of southern tip of Locust Street.	#1	Village of Bath.
Ponding	North boundary: At Lincoln Street/East boundary: 50 feet west of State Highway 78/South boundary: At northernmost entrance of Bath Cemetery/West boundary: Approximately 400 feet west of State Highway 78 along 1st Street.	#3	Village of Bath.
Ponding	North boundary: 225 feet south of 4th Street/East boundary: Approximately 140 feet east of State Highway 78/South boundary: Approximately 200 feet north of B Street/West boundary: At State Highway 78.	+463	Village of Bath.
Ponding	North boundary: Approximately 470 feet north of Mason Street/East boundary: Approximately 1,030 feet east of William Boulevard along Mason Street/South boundary: Approximately 1,300 feet north of Laurel Street/West boundary: At railroad (560 feet east of Teal Drive).	+468	City of Havana.
Ponding	North boundary: Approximately 80 feet south of intersection of Tinkham Street and Lincoln Street/East boundary: Approximately 535 feet west of Promenade Street/South boundary: Approximately 375 feet south of intersection Tinkham Street and Lincoln Street/West boundary: Approximately 610 feet west of Promenade Street.	+472	City of Havana.
Ponding	North boundary: Approximately 810 feet south of Wagner Avenue/East boundary: Approximately 580 feet east of Pear Street/South boundary: Approximately 1,460 feet south of Wagner Avenue/West boundary: At Pear Street.	+469	City of Havana.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Havana

Maps are available for inspection at City Hall, 227 West Main Street, Havana, IL 62644.

Unincorporated Areas of Mason County

Maps are available for inspection at the Mason County Courthouse, Zoning Office, 125 North Plum Street, Havana, IL 62644.

Village of Bath

Maps are available for inspection at the Village Hall, 205 East 1st Street, Bath, IL 62617.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Iosco County, Michigan (All Jurisdictions) Docket No. FEMA–B–1147			
Cedar Lake	Entire shoreline in Iosco County	+609	Township of Oscoda.
Lake Huron	Entire shoreline in the Township of Alabaster	+584	Township of Alabaster.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Alabaster
Maps are available for inspection at 1716 South U.S. Route 23, Tawas City, MI 48763.

Township of Oscoda
Maps are available for inspection at 110 South State Street, Oscoda, MI 48750.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sanilac County, Michigan (All Jurisdictions) Docket No. FEMA–B–1128			
Lake Huron	Entire shoreline within Sanilac County	+584	Township of Delaware, Township of Forester, Township of Lexington, Township of Sanilac, Township of Worth, Village of Forestville, Village of Lexington, Village of Port Sanilac.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Delaware
Maps are available for inspection at 3375 Charleston Road, Minden City, MI 48456.

Township of Forester
Maps are available for inspection at 5680 East Deckerville Road, Deckerville, MI 48427.

Township of Lexington
Maps are available for inspection at 7227 Huron Avenue, Suite 200, Lexington, MI 48450.

Township of Sanilac
Maps are available for inspection at 20 North Ridge Street, Port Sanilac, MI 48469.

Township of Worth
Maps are available for inspection at 6903 South Lakeshore Road, Lexington, MI 48450.

Village of Forestville
Maps are available for inspection at 5605 Cedar Avenue, Forestville, MI 48434.

Village of Lexington
Maps are available for inspection at 7227 Huron Avenue, Suite 100, Lexington, MI 48450.

Village of Port Sanilac
Maps are available for inspection at 56 North Ridge Street, Port Sanilac, MI 48469.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Greene County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1158			
Leaf River	Approximately 1.1 miles downstream of U.S. Route 98	+74	Unincorporated Areas of Greene County.
	Approximately 4.2 miles upstream of U.S. Route 98	+85	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
ADDRESSES **Unincorporated Areas of Greene County** Maps are available for inspection at the Greene County Courthouse, 400 Main Street, Leakesville, MS 39451.			
Dakota County, Nebraska, and Incorporated Areas Docket No. FEMA–B–1133			
Crystal Cove	Just upstream of I–129 along U.S. Route 77	+1086	City of South Sioux City.
Crystal Lake	From just upstream of 152nd Street to just downstream of U.S Route 77.	+1086	City of South Sioux City, Unincorporated Areas of Dakota County.
Crystal Lake Northwest	From just downstream of Golf Road to just upstream of 142nd Street.	+1093	City of South Sioux City.
Crystal Lake-Sump Area	From the intersection of Old Sawmill Road and unnamed road to approximately 780 feet south, extending approximately 1,050 feet west along Old Sawmill Road.	+1098	City of South Sioux City.
Missouri River	Approximately 1 mile downstream of the confluence with Omaha Creek Ditch.	+1069	City of Dakota City, City of South Sioux City, Unincorporated Areas of Dakota County.
	Approximately 0.9 mile upstream of the confluence with Aowa Creek.	+1102	
Old Silver Lake Creek	At the confluence with the Missouri River	+1090	City of South Sioux City.
	Approximately 200 feet downstream of West 29th Street	+1092	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Dakota City
Maps are available for inspection at 1511 Broadway Street, Dakota City, NE 68731.

City of South Sioux City
Maps are available for inspection at 1615 1st Avenue, South Sioux City, NE 68776.

Unincorporated Areas of Dakota County
Maps are available for inspection at 1601 Broadway Street, Dakota City, NE 68731.

Washington County, Nebraska, and Incorporated Area Docket No. FEMA–B–1147			
Cameron Ditch	At the confluence with the Missouri River	+1009	City of Blair.
	Just downstream of Washington Street	+1009	
Cauble Creek	Just upstream of U.S. Route 75 (Herman Boulevard)	+1064	City of Blair.
	Approximately 1,500 feet west of Nebraska Highway 31	+1243	
Cauble Creek East Tributary	At the confluence with Cauble Creek	+1036	City of Blair.
	Approximately 100 feet downstream of Pinewood Drive	+1036	
Missouri River	At the Douglas County boundary	+995	City of Blair, City of Fort Calhoun, Unincorporated Areas of Washington County, Village of Herman.
	At the Burt County boundary	+1018	
Unnamed Creek	Approximately 400 feet downstream of South 10th Street	+1066	City of Blair.
	Approximately 1,500 feet upstream of Pi Hack Street	+1233	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
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∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Blair
Maps are available for inspection at 218 South 16th Street, Blair, NE 68008.

City of Fort Calhoun
Maps are available for inspection at 110 South 14th Street, Fort Calhoun, NE 68023.

Unincorporated Areas of Washington County
Maps are available for inspection at 111 West 4th Street, Kennard, NE 68034.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Village of Herman			
Maps are available for inspection at 504 U.S. Route 75, Herman, NE 68029.			
Fairfield County, Ohio, and Incorporated Areas Docket No. FEMA–B–1109			
Baltimore Tributary	At the confluence with Pawpaw Creek	+847	Unincorporated Areas of Fairfield County, Village of Baltimore.
	Approximately 0.41 mile downstream of Roley Road	+860	
Buckeye Lake	Entire shoreline	+893	Unincorporated Areas of Fairfield County, Village of Millersport.
Clark Run	At the confluence with Rush Creek	+804	Unincorporated Areas of Fairfield County.
	Approximately 586 feet upstream of the confluence with Rush Creek.	+805	
Claypool Run	At the confluence with Ohio Canal	+838	Unincorporated Areas of Fairfield County.
	Approximately 200 feet downstream of Brook Road	+909	
Crumley Creek	At the confluence with Hunters Run	+905	Unincorporated Areas of Fairfield County.
	Approximately 850 feet upstream of the confluence with Hunters Run.	+914	
Georges Creek	Approximately 1,588 feet downstream of Conrail Railroad	+798	City of Pickerington.
	At the upstream side of Pickerington Ridge Road	+815	
Greenfield Creek	At the confluence with Ohio Canal	+830	Unincorporated Areas of Fairfield County.
	Approximately 1,400 feet upstream of Coonpath Road	+898	
Greenfield Creek Escape	At the confluence with Claypool Run	+839	Unincorporated Areas of Fairfield County.
	Approximately 2,000 feet downstream of Election House Road.	+854	
Greenfield Creek Split	At the confluence with Greenfield Creek	+865	Unincorporated Areas of Fairfield County.
	Approximately 2,000 feet upstream of the confluence with Greenfield Creek.	+872	
Hocking River	Approximately 100 feet downstream of Sugar Grove Road	+808	City of Lancaster, Unincorporated Areas of Fairfield County.
	Approximately 650 feet upstream of the confluence with Wilson Creek.	+886	
Hocking River Lateral D	At the confluence with the Hocking River	+826	City of Lancaster.
	Approximately 125 feet downstream of Collins Road	+830	
Hunters Run	At the confluence with the Hocking River	+815	City of Lancaster, Unincorporated Areas of Fairfield County.
	Approximately 250 feet downstream of Mt. Zion Road	+967	
Ohio Canal	At the confluence with the Hocking River	+825	City of Lancaster, Unincorporated Areas of Fairfield County.
	At the confluence with Ohio Canal Lateral A	+844	
Ohio Canal Lateral A	At the confluence with Ohio Canal	+844	Unincorporated Areas of Fairfield County.
	Approximately 705 feet downstream of U.S. Route 33	+848	
Pawpaw Creek	At the confluence with Walnut Creek	+844	Unincorporated Areas of Fairfield County, Village of Baltimore.
	Approximately 1,169 feet upstream of North Main Street	+868	
Rush Creek	Approximately 0.8 mile downstream of the confluence with Clark Run.	+800	Unincorporated Areas of Fairfield County.
	Approximately 283 feet upstream of the confluence with Clark Run.	+803	
South Fork Licking River	At the upstream side of Walnut Road at the west crossing of the South Fork Licking River.	+886	Unincorporated Areas of Fairfield County.
	At the upstream side of Walnut Road at the east crossing of the South Fork Licking River.	+892	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Stonewall Creek	At the confluence with Hunters Run	+860	Unincorporated Areas of Fairfield County.
	Approximately 0.46 mile upstream of U.S. Route 22	+899	
Sycamore Creek	At the confluence with Walnut Creek	+773	City of Pickerington, Unincorporated Areas of Fairfield County.
	Approximately 505 feet upstream of DeCarlo Lane	+1019	
Tributary B	At the upstream side of Paradise Road	+791	Unincorporated Areas of Fairfield County.
	Approximately 956 feet upstream of Paradise Road	+791	
Unnamed Tributary to Sycamore Creek.	At the confluence with Sycamore Creek	+841	City of Pickerington, Unincorporated Areas of Fairfield County.
	Approximately 0.44 mile upstream of Doty Road	+881	
Unnamed Tributary to Walnut Creek (backwater effects from Walnut Creek).	At the confluence with Walnut Creek	+867	Unincorporated Areas of Fairfield County, Village of Thurston.
	Approximately 1,240 feet upstream of the confluence with Walnut Creek.	+867	
Willow Run	At the confluence with Sycamore Creek	+816	City of Pickerington, Unincorporated Areas of Fairfield County.
	Approximately 250 feet downstream of Refugee Road	+918	
Wilson Creek	At the confluence with the Hocking River	+884	Unincorporated Areas of Fairfield County.
	Approximately 200 feet downstream of Mt. Zion Road	+903	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lancaster
Maps are available for inspection at 121 East Chestnut Street, Lancaster, OH 43130.

City of Pickerington
Maps are available for inspection at 100 Lockville Road, Pickerington, OH 43137.

Unincorporated Areas of Fairfield County
Maps are available for inspection at 210 East Main Street, Lancaster, OH 43130.

Village of Baltimore
Maps are available for inspection at 103 West Market Street, Baltimore, OH 42105.

Village of Millersport
Maps are available for inspection at 2245 Refugee Street, Millersport, OH 43046.

Village of Thurston
Maps are available for inspection at 2215 Main Street, Thurston, OH 43157.

Butte County, South Dakota, and Incorporated Areas
Docket No. FEMA–B–1155

Belle Fourche River	At the upstream side of U.S. Route 212	+3008	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 0.7 mile upstream of Fairground Road	+3019	
Hay Creek	Approximately 500 feet downstream of U.S. Route 85	+3042	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 0.9 mile downstream of Black Angus Lane	+3089	
Redwater River	Approximately 1,200 feet downstream of U.S. Route 212B	+3016	City of Belle Fourche, Unincorporated Areas of Butte County.
	Approximately 700 feet upstream of U.S. Route 212B	+3023	
Willow Creek	Approximately 0.5 mile downstream of Snoma Street	+3022	City of Belle Fourche, Unincorporated Areas of Butte County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1,650 feet downstream of West Wood Road.	+3183	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Belle Fourche
Maps are available for inspection at 511 6th Avenue, Belle Fourche, SD 57717.

Unincorporated Areas of Butte County
Maps are available for inspection at 830 6th Avenue, Belle Fourche, SD 57717.

Custer County, South Dakota, and Incorporated Areas
Docket No. FEMA–B–1155

Battle Creek	Approximately 1.6 miles downstream of Chicago and Northwest Railroad.	+3262	Town of Hermosa, Unincorporated Areas of Custer County.
	Approximately 600 feet upstream of Paradise Road	+3388	
Ferguson Split Flow-Battle Creek.	Approximately 0.5 mile downstream of Fairgrounds Place	+3260	Town of Hermosa, Unincorporated Areas of Custer County.
	Approximately 130 feet upstream of Donna Street	+3292	
Grace Coolidge Creek	Approximately 180 feet downstream of the divergence from Battle Creek.	+3341	Unincorporated Areas of Custer County.
	Approximately 3.1 miles upstream of State Highway 36	+3473	
Railroad Spill Flow-Battle Creek	Just upstream of the confluence with Battle Creek	+3290	Town of Hermosa, Unincorporated Areas of Custer County.
	Just downstream of the divergence from Battle Creek	+3294	
South Bank Split Flow-Battle Creek.	Approximately 1,200 feet upstream of the confluence with Battle Creek.	+3310	Unincorporated Areas of Custer County.
	Approximately 870 feet upstream of Yellow Oak Road	+3325	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Hermosa
Maps are available for inspection at 420 Mount Rushmore Road, Custer, SD 57730.

Unincorporated Areas of Custer County
Maps are available for inspection at 420 Mount Rushmore Road, Custer, SD 57730.

Sanborn County, South Dakota, and Incorporated Areas
Docket No. FEMA–B–1158

Branch 4 of Ditch 21	At the confluence with County Ditch No. 6 and County Ditch No. 8.	+1298	Unincorporated Areas of Sanborn County.
	Just downstream of 227th Street	+1305	
County Ditch No. 6	At the confluence with County Ditch No. 8 and Branch 4 of Ditch 21.	+1298	Unincorporated Areas of Sanborn County.
	Approximately 630 feet upstream of 396th Avenue	+1307	
County Ditch No. 7	Approximately 350 feet downstream of 397th Avenue	+1300	City of Woonsocket, Unincorporated Areas of Sanborn County.
	Approximately 0.6 mile upstream of 396th Avenue	+1302	
County Ditch No. 8	Approximately 0.6 mile downstream of 398th Avenue	+1292	City of Woonsocket, Unincorporated Areas of Sanborn County.
	At the confluence with County Ditch No. 6 and Branch 4 of Ditch 21.	+1298	
Dry Run 8	At the confluence with County Ditch No. 8	+1295	Unincorporated Areas of Sanborn County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1.3 miles upstream of the confluence with County Ditch No. 8.	+1297	

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+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Woonsocket
Maps are available for inspection at City Hall, 103 South 3rd Avenue, Woonsocket, SD 57385.

Unincorporated Areas of Sanborn County
Maps are available for inspection at the Sanborn County Government Offices, 604 West 6th Street, Woonsocket, SD 57385.

Marion County, Tennessee, and Incorporated Areas
Docket No. FEMA–B–1134

Little Sequatchie River	Approximately 2,500 feet downstream of Valley View Highway.	+628	Unincorporated Areas of Marion County.
	Approximately 1,400 feet downstream of Valley View Highway.	+630	
Town Creek	Just upstream of U.S. Route 64	+619	Town of Jasper.
	Approximately 4,000 feet upstream of U.S. Route 64	+619	
West Fork Pryor Cove Branch	At the confluence with Pryor Cove Branch	+717	Town of Jasper, Unincorporated Areas of Marion County.
	Approximately 3,200 feet upstream of the confluence with Pryor Cove Branch.	+784	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Jasper
Maps are available for inspection at 4460 Main Street, Jasper, TN 37347.

Unincorporated Areas of Marion County
Maps are available for inspection at 4460 Main Street, Jasper, TN 37347.

Taylor County, Texas, and Incorporated Areas
Docket Nos. FEMA–B–1060 and B–1170

Button Willow Creek	Just downstream of Treadway Boulevard	+1756	City of Abilene.
	Just upstream of Beltway South	+1825	
Cat Claw Creek	At the confluence with Elm Creek	+1677	City of Abilene, Unincorporated Areas of Taylor County.
	Approximately 2 miles upstream of FM 707	+1842	
Cat Claw Creek Diversion Channel.	At the confluence with Cat Claw Creek	+1758	City of Abilene.
	Just upstream of Nonesuch Road	+1762	
Cat Claw Creek Diversion Channel 1.	At the confluence with Cat Claw Drive Channel	+1762	City of Abilene.
	Just upstream of Nonesuch Road	+1762	
Cat Claw Drive Channel	Just downstream of Southwest Drive	+1762	City of Abilene.
	At the confluence with Cat Claw Creek	+1777	
Cedar Creek	Just upstream of North 10th Street	+1688	City of Abilene, Unincorporated Areas of Taylor County.
	Just downstream of Beltway South	+1791	
Elm Creek	Approximately 0.7 mile downstream of Nugent Road	+1650	City of Abilene, Town of Impact, Unincorporated Areas of Taylor County.
	Approximately 1 mile upstream from FM 707	+1831	
Elm Creek Diversion 1	At the confluence with Elm Creek	+1725	City of Abilene.
	Just downstream of Don Juan Street	+1727	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Elm Creek Loop 1	Ending at the lower confluence with Elm Creek	+1656	City of Abilene, Unincorporated Areas of Taylor County.
	Starting at the upper confluence with Elm Creek	+1663	
Elm Creek Overflow	At the confluence with Little Elm Creek	+1732	City of Abilene.
	Approximately 1,800 feet upstream of Twylight Trail	+1769	
Elm Creek Overflow Path 1	At the confluence with Swale A–1	+1685	City of Abilene.
	Just upstream of Ambler Avenue	+1701	
Elm Creek Overflow Path 1–A	At the confluence with Elm Creek Overflow Path 1	+1696	City of Abilene.
	Approximately 0.5 mile upstream of Ambler Avenue	+1702	
Elm Creek Overflow Path 2	At the confluence with Elm Creek	+1702	City of Abilene.
	Just downstream of Texas and Pacific Railroad	+1721	
Elm Creek to Cedar Creek Overflow.	Approximately 1.3 miles downstream of FM 3308	+1646	City of Abilene, Unincorporated Areas of Taylor County.
	Just downstream of FM 3308	+1656	
Indian Creek	At the confluence with Elm Creek	+1693	City of Abilene, Unincorporated Areas of Taylor County.
	Approximately 0.9 mile upstream of Shirley Road	+1699	
Little Elm Creek	At the confluence with Elm Creek	+1702	City of Abilene, Unincorporated Areas of Taylor County.
	Approximately 1 mile upstream of Dyess Air Force Service Road.	+1784	
Little Elm Creek Overflow A	At the confluence with Little Elm Creek	+1729	City of Abilene.
	At the confluence with Elm Creek Overflow	+1750	
Lytle Creek	At the confluence with Cedar Creek	+1697	City of Abilene, Unincorporated Areas of Taylor County.
	Just downstream of County Road 111–1	+1760	
Rainy Creek	Just downstream of Lowden Street	+1670	City of Abilene.
	Just downstream of North 10th Street	+1696	
Swale A	Just upstream of I–20	+1685	City of Abilene.
	Just downstream of State Street	+1713	
Swale A–1	Just upstream of I–20	+1685	City of Abilene.
	Just downstream of Yale Avenue	+1715	
Tributary No. 1 to Elm Creek	At the confluence with Elm Creek	+1767	City of Abilene, Unincorporated Areas of Taylor County.
	Approximately 1.6 miles upstream of Rebecca Lane	+1792	
Tributary No. 1 to Little Elm Creek.	Just downstream of I–20 Business	+1712	City of Abilene.
	Approximately 1.5 miles upstream of I–20 Business	+1734	
Tributary No. 2 to Elm Creek	At the confluence with Elm Creek	+1781	City of Abilene, Unincorporated Areas of Taylor County.
	Just upstream of County Road 314	+1811	
Unnamed Tributary to Cat Claw Creek.	At the confluence with Cat Claw Creek	+1803	City of Abilene.
	Approximately 600 feet upstream of Rio Mesa Road	+1821	
Unnamed Tributary to Rainy Creek.	At the confluence with Rainy Creek	+1694	City of Abilene.
	Just downstream of Stamford Street	+1695	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Abilene
Maps are available for inspection at 555 Walnut Street, Abilene, TX 79601.

Town of Impact
Maps are available for inspection at 555 Walnut Street, Abilene, TX 79602.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Taylor County			
Maps are available for inspection at 400 Oak Street, Suite 107, Abilene, TX 79602.			
La Crosse County, Wisconsin, and Incorporated Areas Docket No. FEMA–B–1155			
Black River	Approximately 0.5 mile downstream of the confluence with Davis Creek.	+694	Unincorporated Areas of La Crosse County.
	Approximately 3.36 miles upstream of the confluence with Hardies Creek.	+706	
Ebner Coulee Main Channel	Approximately 1,584 feet downstream of 29th Street	+659	City of La Crosse, Unincorporated Areas of La Crosse County.
	Approximately 1,584 feet upstream of 29th Street	+697	
Ebner Coulee Southeast Bank	Approximately 52.8 feet upstream of 29th Street	+665	City of La Crosse.
	Approximately 528 feet upstream of 29th Street	+673	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of La Crosse
Maps are available for inspection at City Hall, 400 La Crosse Street, La Crosse, WI 54601.

Unincorporated Areas of La Crosse County
Maps are available for inspection at 400 4th Street North, La Crosse, WI 54601.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 5, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–32595 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–123; FCC 11–93]

Service Rules and Policies for the Broadcasting Satellite Service (BSS)

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Service Rules and Policies for the Broadcasting Satellite Service (BSS), Report and Order (Second Report and Order). The information collection requirements were approved on November 17, 2011 by OMB.

DATES: 47 CFR 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), (b), (c), (d) and (f) are effective on March 15, 2012.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery, Satellite Division, International Bureau, at (202) 418–2229, or email: *Lynne.Montgomery@fcc.gov <mailto:Lynne.Montgomery@fcc.gov.>*

SUPPLEMENTARY INFORMATION: This document announces that, on November 17, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), (b), (c), (d) and (f). The Commission publishes this notice as an announcement of the effective date of the rules. *See,* Service Rules and Policies for the Broadcasting Satellite Service (BSS), IB Docket No. 06–123; FCC 11–93, published at 76 FR 50425, August 15, 2011. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1097, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov<mailto:PRA@fcc.gov.>*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov<mailto:fcc504@fcc.gov>* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on November 17, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), (b), (c), (d) and (f).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act that does not display a current valid OMB Control Number. The OMB Control Number is 3060–1097.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1097.

OMB Approval Date: November 17, 2011.

OMB Expiration Date: November 30, 2014.

Title: Service Rules and Policies for the Broadcasting Satellite Service (BSS).

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8 respondents; 48 responses.

Estimated Time per Response: 2 hours–36 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308.

Total Annual Burden: 848 hours.

Total Annual Cost: $43,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On June 14, 2011 the Commission released Second Report and Order FCC 11–93, published at 76 FR 50245, August, 2011, adopting final rules—containing information collection requirements—for the 17/24 GHz (BSS) to mitigate space path interference between the 17/24 GHz BSS space-to-Earth transmissions and the feeder link receiving antennas of Direct Broadcast Satellite Service (DBS) space stations that operate in the same frequency band.

Below are the new information collection requirements contained in the Second Report and Order:

47 CFR 25.114(d)(15)(iv)—Applicants filing for a space station authorization must file the information required in Section 26.264(a)–(b).

47 CFR 25.114(d)(18)—Applicants filing for a space station authorization in the Direct Broadcast Satellite service or the 17/24 GHz broadcasting-satellite service, must provide maximum orbital eccentricity calculations.

47 CFR 25.264(a)—Each applicant for a space station license in the 17/24 GHz broadcasting-satellite service (BSS) must provide a series of tables or graphs with its application, that contain the predicted transmitting antenna off-axis gain information for each transmitting antenna in the 17.3–17.8 GHz frequency band. Using a Cartesian coordinate system wherein the X-axis is defined as tangent to the geostationary orbital arc with the positive direction pointing east, i.e., in the direction of travel of the satellite; the Y-axis is defined as parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z-axis is defined parallel to a line passing through the center of the Earth, with the positive direction pointing toward the Earth, the applicant must provide the predicted transmitting antenna off-axis antenna gain information:

(1) In the X–Z plane, i.e., the plane of the geostationary orbit, over a range of ± 30 Degrees from the positive and negative X-axes in increments of 5 degrees or less.

(2) In planes rotated from the X–Z plane about the Z-axis, over a range of up to ± 60 degrees relative to the equatorial plane, in increments of 10 degrees or less.

(3) In both polarizations.

(4) At a minimum of three measurement frequencies determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant must also explain its reasons for doing so.

47 CFR 25.264(b)—Each applicant for a space station license in the 17/24 GHz BSS must provide power flux density (pfd) calculations with its application that are based upon the predicted off-axis transmitting antenna gain information submitted in accordance with paragraph (a) of this section, as follows:

(1) The pfd calculations must be provided at the location of all prior-filed U.S. DBS space stations where the applicant's pfd level exceeds the coordination trigger of − 117 dBW/m[FN2]/100 kHz in the 17.3–17.8 GHz band. In this rule, the term prior-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) prior to the filing of the 17/24 GHz BSS application containing the predicted off-axis transmitting antenna gain information. The term prior-filed U.S. DBS space station does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid. Prior-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market, but do not include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of − 117 dBW/m[FN2]/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of − 117 dBW/m[FN2]/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd level is in excess of the threshold level of − 117 dBW/m[FN2]/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant must also provide with its application certification that all affected DBS operators acknowledge and do not object to the applicants higher off-axis pfd levels. No such certification is required in cases where the DBS and 17/24 GHz BSS assigned operating frequencies do not overlap.

47 CFR 25.264(c)—No later than nine months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must confirm the predicted transmitting antenna off-axis gain information provided in accordance with § 25.114(d)(15)(iv) by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations described in paragraphs (a)(1)–(5) of this section. The transmitting antenna off-axis gain information should be measured under conditions as close to flight configuration as possible.

47 CFR 25.264(d)—No later than nine months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must provide pfd calculations based upon the measured transmitting antenna off-axis gain information that is submitted in accordance with paragraph (c) of this section as follows:

(1) The pfd calculations must be provided:

(i) At the location of all prior-filed U.S. DBS space stations as defined in paragraph (b)(1) of this section, where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m[FN2]/100 kHz; and

(ii) At the location of any subsequently-filed DBS U.S. DBS space station where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m[FN2]/100 kHz. In this rule, the term subsequently-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a)–(b) of this section, but prior to the time the 17/24 GHz BSS operator submitted the measured data required in this paragraph. Subsequently-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market. The term does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid, nor does it include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m[FN2]/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's or licensee's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m[FN2]/100 kHz at those prior-filed U.S. DBS space station locations.

47 CFR 25.264(f)—The 17/24 GHz BSS applicant or licensee must modify its license, or amend its application, as appropriate, based upon new information:

(1) If the pfd levels submitted in accordance with paragraph (d) of this section are in excess of those submitted in accordance with paragraph (b) of this section at the location of any prior-filed or subsequently-filed U.S. DBS space station as defined in paragraphs (b)(1) and (d)(1) of this section, or

(2) If the 17/24 GHz BSS operator adjusts its operating parameters in accordance with paragraphs (e)(1)(ii) or (e)(2)(ii) of this section.

OMB approved these information collection requirements on November 17, 2011.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–32465 Filed 12–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–52; Report No. 2940]

Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures; Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning new procedures for evaluating mutually exclusive proposals for radio service, as well as for applications to change a station's community of license. The Commission adopted these procedural changes to promote the initiation and retention of radio service in and to smaller communities and rural areas.

DATES: Oppositions to the Petitions must be filed by January 5, 2012. Replies to an opposition must be filed January 17, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter Doyle or Thomas Nessinger, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2940, released December 12, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) 1–(800) 378–3160. The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures published at 76 FR 18942, April 6, 2011, in MB Docket No. 09–52, and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Number of Petitions Filed: 6.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–32554 Filed 12–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 10–64; RM–11598; DA 11–2008]

Radio Broadcasting Services; Milford, UT

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Audio Division, at the request of Canyon Media Group, LLC, allots FM Channel 288C and deletes FM Channel 285C at Milford, Utah. The allotment change is part of a hybrid rule making and FM application proposal. Channel 288C can be allotted at Milford, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 38–31–11 NL and 113–17–07 WL, with a site restriction of 27.6 km (17.2 miles) northwest of the community *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 10–64, adopted December 7, 2011, and released December 9, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information

Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *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). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 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, and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Utah, is amended at Milford by removing Channel 285C and adding Channel 288C in its place.

[FR Doc. 2011–32713 Filed 12–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–87; RM–11628; DA 11–1916]

Radio Broadcasting Services; Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Kenneth W. Diebel (''Petitioner''), deletes FM Channel 230A and allots FM Channel 228A at Bastrop, Louisiana. The purpose of the proposed channel substitution is to accommodate Petitioner's pending application to upgrade FM Station KGGM, Delhi, Louisiana, to Channel 230C3. Channel 228A can be allotted at Bastrop, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 32–48–20 NL and 91–52–5 WL, with a site restriction of 7.2 km (4.5 miles) northeast of the community *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective December 26, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–87, adopted November 17, 2011, and released November 18, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *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). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

Channel 230A is not listed in the FM Table of Allotments. Vacant Channel 230A at Bastrop was inadvertently removed from the FM Table of Allotments in MB Docket 05–210 (see 71 FR 76208, published December 20, 2006), but the channel will not be restored to the Table; instead, under the provisions of this Report and Order, the FM Table of Allotments is amended by adding Channel 228A at Bastrop, Louisiana.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 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, and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Bastrop, Channel 228A.

[FR Doc. 2011–32715 Filed 12–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 07–172; Report No. 2941]

Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning a rule authorizing the use of FM translators with licenses or permits in effect as of May 1, 2009, to rebroadcast the signal of a local AM Station.

DATES: Oppositions to the Petitions must be filed by January 5, 2012. Replies to an opposition must be filed January 17, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Hutton, Media Bureau, (202) 418–7266.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2941, released December 13,

2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–(800) 378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, published at 74 FR 45126, September 1, 2009, in MB Docket No. 07–172, and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–32555 Filed 12–20–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

Privacy Act of 1974: Implementation of Exemptions; DOT/ALL 23—Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''DOT/ALL 23—Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DOT/ALL 23—Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective December 21, 2011.

FOR FURTHER INFORMATION CONTACT: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590 or *privacy@dot.gov* or (202) 366–8135.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (DOT), Office of the Secretary (OST) published a notice of proposed rulemaking in the **Federal Register** (Volume 76, Number 173), September 7, 2011, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DOT/ALL 23—Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records. The DOT/ALL 23—Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative system of records notice was published concurrently in the **Federal Register** (Volume 76, Number 184), September 22, 2011, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DOT received no comments on the NPRM and no comments on the SORN.

List of Subjects in 49 CFR Part 10

Authority delegations (government agencies); Organization and functions (government agencies); Transportation Department.

In consideration of the foregoing, DOT amends part 10 of title 49, Code of Federal Regulations, as follows:

PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: Pub. L. 93–579; 49 U.S.C. 322.

■ 2. In the Appendix to Part 10, revise Part II.A. introductory text, and add Part II.A.8 to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific Exemptions

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

* * * * *

8. Suspicious Activity Reporting (SAR) database, maintained by the Office of Intelligence, Security, and Emergency Response, Office of the Secretary.

* * * * *

Issued in Washington, DC, on December 12, 2011.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2011–32351 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2011–0177]

RIN 2127–AK83

Tire Fuel Efficiency Consumer Information Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of a March 30, 2010 final rule that established test methods to be used by tire manufacturers to generate comparative performance information in order to inform consumers about differences in the fuel efficiency (rolling resistance), safety (wet traction), and durability (treadwear) of replacement passenger car tires. The final rule also established reporting requirements for the generated performance information. In response to the petitions, today's final rule revises certain aspects of the reporting requirements and clarifies others, incorporates by reference a publication cited in the final rule but not included with the other publications incorporated by reference, and clarifies the scope of the program by amending the definition of the term, ''replacement passenger car tires.''

DATES: Today's final rule is effective January 20, 2012. The incorporation by reference of certain publications listed in the rule was approved by the Director of the **Federal Register** as of June 1, 2010.

The various compliance dates for these regulations are set forth, as applicable, in § 575.106(e)(1)(iii).

Petitions for reconsideration must be received February 6, 2012.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety

Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For policy and technical issues: Ms. Mary Versailles, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2057.

For legal issues: Mr. William H. Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Final Rule

The Energy Independence and Security Act of 2007 (EISA) [1] included a requirement that NHTSA develop a national tire fuel efficiency consumer information program (TFECIP) to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability.

On June 22, 2009, NHTSA published a notice of proposed rulemaking (NPRM) for the TFECIP.[2] The NPRM proposed to require manufacturers to rate their tires using the ISO 28580 test methods for rolling resistance (fuel efficiency), and the existing uniform tire quality grading standards (UTQGS) test methods for wet traction (safety) and treadwear (durability). The NPRM also proposed to require replacement tires to be labeled for each of these three ratings using a 0 to 100 scale, and proposed to require manufacturers to report various data concerning replacement tires to NHTSA. The agency received over 600 pages of comments on the NPRM.

On March 30, 2010, NHTSA published a final rule specifying the test methods to be used to measure three aspects of tire performance: rolling resistance, wet traction, and treadwear life.[3] The final rule also included revised reporting requirements for manufacturers. The final rule did not include any of the requirements for the consumer information and education portions of the TFECIP.[4] Instead, NHTSA announced that, based on the comments the agency had received, it had decided to conduct additional research before issuing a new proposal for these requirements.

B. Overview of Petitions for Reconsideration

The agency received nine petitions for reconsideration of the March 2010 final rule, including one petition from the Rubber Manufacturers Association (RMA), a tire industry trade association, and eight petitions from individual tire manufacturers. Except for a supplemental petition filed by Bridgestone Americas Tire Operations, LLC (Bridgestone), the tire manufacturers' petitions indicated their support for the RMA petition and did not raise any additional issues or arguments. Therefore, only the issues raised by the RMA petition and the Bridgestone supplemental petition are addressed by this document. These issues are summarized below:

- RMA petitioned the agency to reconsider the final rule's requirement that tire manufacturers report the tire fuel efficiency (TFE) rating information as part of the Early Warning Reporting (EWR) data submissions.
- RMA petitioned the agency to clarify the section of the final rule requiring tire manufacturers to report new or different rating information to NHTSA and recommended separating the section into two distinct requirements, one for rating information for new tires and one for new or different rating information for existing tires. RMA further petitioned the agency to reconsider the requirement that new or different ratings be reported not more than 30 days after the receipt of information that would determine such new or different ratings.
- RMA petitioned the agency to reconsider the language used to establish the reporting requirements for exempted tires, asserting that the final rule was unclear as to whether a manufacturer is permitted to update its list of exempted tires, either by including new exempted tires on the list or by removing tires on the list that no longer meet the requirements for exemption.
- RMA petitioned the agency to incorporate by reference ASTM International E 501–08, ''Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests,'' (''ASTM E 501''), a publication that was cited in the final rule but for which a citation was not included with the other publications incorporated by reference in § 575.3.
- Bridgestone petitioned the agency to clarify the definition of ''Replacement passenger car tire.''
- RMA offered comments regarding issues not decided in the March 2010 final rule, including: the metric for expressing rolling resistance; the determination of the ratings for rolling resistance, wet traction, and treadwear; the selection of the lab alignment tires and reference laboratory or laboratories consistent with ISO 28580; and the lead time for compliance with the requirements.

II. Petitions for Reconsideration and Agency's Response

A. Reporting Format and Information To Be Reported

The March 2010 final rule established reporting requirements for tire manufacturers, requiring each manufacturer to report to NHTSA the rolling resistance rating, wet traction rating, and treadwear rating for each stock keeping unit (SKU) it manufactures.[5] The final rule reduced the amount of required information contemplated in the NPRM, which had proposed requiring tire manufacturers to report the base test values upon which the ratings were calculated. Regarding the format, the final rule required rating information to be reported as extra columns in the EWR electronic data submissions required by Section 26 of Part 579, which requires tire manufacturers to report tire production information.

[1] Public Law 110–140, 121 Stat. 1492 (Dec. 18, 2007).

[2] *See* Notice of Proposed Rulemaking, Tire Fuel Efficiency Consumer Information Program, 74 FR 29542 (June 22, 2009); Docket No. NHTSA–2008–0121–0014.

[3] *See* Final Rule, Tire Fuel Efficiency Consumer Information Program, 75 FR 15894 (Mar. 30, 2010); Docket No. NHTSA–2010–0036–001.

[4] Although the March 2010 final rule did not include requirements for how the performance information would be displayed, the final rule noted that Section 111 of EISA explicitly prohibits NHTSA from requiring permanent labeling on the tire for the purposes of tire fuel efficiency information (49 U.S.C. 32204A(d)).

[5] These reporting requirements will be implemented as indicated in a forthcoming final rule (49 CFR 575.106(e)(1)(iii)).

The purpose of the reporting requirements for the TFECIP is to provide consumers with a database that allows cross-comparisons of tire brands, and for the functioning of the online fuel economy calculator.

RMA petitioned the agency to reconsider the format of the reporting requirements. First, RMA cited the difference in reporting frequency between EWR information and TFECIP rating information. Specifically, RMA noted that EWR production information is submitted quarterly, while the final rule contemplated one-time reporting of TFECIP rating information for existing tires, with additional reporting of tire rating information for new tires relative to their introduction to the market. RMA asserted that because, in the vast majority of cases, TFECIP rating information would not change after the information was initially reported, requiring the information to be reported quarterly would impose an additional and unnecessary burden on tire manufacturers and increase the complexity of their EWR submissions.

Second, RMA noted that the EWR program is managed by NHTSA's Office of Defects Investigation for the purpose of identifying potential safety issues, while the TFECIP rating information will likely be used and managed by NHTSA's Offices of Rulemaking and Vehicle Compliance for the purpose of providing consumer information. RMA indicated that, likewise, responsibility for reporting the two types of information will likely lie with different departments within each tire manufacturer. Accordingly, RMA contended that separating the reporting of each type of information would likely increase efficiency.

Third, RMA noted that the EWR electronic reporting system has input verification checks, and it was concerned that adding columns to the EWR data submission could potentially cause rejection of submissions, leading to delays and jeopardizing the manufacturers' ability to timely comply with the EWR requirements.

Fourth, RMA noted that the EWR submissions include some confidential information, while the TFECIP rating information is intended to be disseminated to the public. RMA indicated that separating the two types of submissions would streamline the data management process.

Finally, RMA cited Congress's contemplation of legislation that could change the EWR program and recommended that EWR and TFECIP submissions be separated so that the reporting of TFECIP rating information would not be inadvertently affected by the potential legislation.

Based on these reasons, RMA recommended that TFECIP rating information be submitted in a specified electronic format, such as a spreadsheet. RMA further recommended that the agency provide a template for manufacturers to use so that TFECIP submissions would be in a consistent format and could be uploaded efficiently to NHTSA's consumer tire Web site.

Agency Response—The agency is granting RMA's request to separate the TFECIP rating information submissions from the EWR reports. The NPRM contemplated a reporting system consisting of both a spreadsheet template and an online data reporting system. The final rule mandated that tire rating information be submitted as extra columns in each manufacturer's EWR submission based on the rationale that such a format would impose a minimal burden on manufacturers. However, in light of RMA's comments, NHTSA agrees that the difference in reporting frequency between TFECIP submissions and EWR submissions would make it complicated for manufacturers to combine both submissions.

Accordingly, today's final rule eliminates the requirement that TFECIP rating information be submitted as extra columns in a manufacturer's EWR submission and, instead, requires that rating information be submitted to NHTSA by mail, facsimile, or email. Additionally, because the tire rating information will no longer accompany the EWR submissions, this final rule requires that certain identification information that would have been contained in the EWR submissions be included with the separate rating information submissions. This required identification information includes the manufacturer's name, the brand name owner (if different than the manufacturer), the tire line, the SKU, and the tire size.

Because this identification information is now required by § 575.106, a new definition is being added to this section and an existing definition is being amended to clarify what information is required. The term ''manufacturer'' is not defined in Part 575. In order to specify the meaning of this term for the purpose of the rating information submissions, as well as to clarify the applicability of the requirements of § 575.106, this final rule includes a definition of the term ''manufacturer'' in § 575.106 based on the definition used in Part 579, *Reporting of Information and Communications About Potential Defects,*[6] which specifies the EWR requirements. Additionally, the definition of the term ''tire line'' is amended to remove the phrase ''or *tire model.''* The term ''tire model'' is not used anywhere else in the regulatory text, and, within the tire industry, the term is often used to represent the finite element or mathematical model of a tire, rather than the name a manufacturer uses to designate a tire product. Accordingly, to define it differently in § 575.106 could be potentially confusing.

At this time, the agency is not requiring a specific format for the submission of rating information. The agency is exploring the development of an online submission form and is considering the use of such a form as a future improvement to facilitate submissions.

In the NPRM, NHTSA proposed a reporting system consisting of both a spreadsheet template and an online data reporting system. The estimated reporting costs based on this proposed system were examined in detail in the Preliminary Regulatory Impact Analysis (PRIA).[7] In the Final Regulatory Impact Analysis (FRIA),[8] NHTSA responded to manufacturer comments on the initial estimates of these costs. However, NHTSA did not modify those estimates to account for the cost savings realized by combining the TFECIP reports with the EWR reports, and no comments regarding the final estimates were submitted. Therefore, NHTSA believes that the estimated reporting costs in the March 2010 final rule accurately reflect the expected reporting costs associated with the amended reporting requirements established by today's final rule, which, like the proposed reporting system described in the NPRM, require TFECIP rating information to be submitted separately.

B. Ongoing Reporting Requirements for New or Different Rating Information

In addition to establishing initial reporting requirements for manufacturers, the March 2010 final rule established ongoing reporting requirements. Specifically, the final rule required a manufacturer who receives information that would determine new or different rating information for its

[6] 49 CFR 579.4.

[7] Preliminary Regulatory Impact Analysis, Notice of Proposed Rulemaking Replacement Tire Consumer Information Program Part 575.106, June 2009 (Docket No. NHTSA–2008–0121–0015.1).

[8] Final Regulatory Impact Analysis, Replacement Tire Consumer Information Program Part 575.106, March 2010 (Docket No. NHTSA–2010–0036–0002.1).

tires to report the new or different rating information to NHTSA within 30 days of receiving the information. Additionally, the preamble to the NPRM and the preamble to the final rule stated that, after the initial reporting period, manufacturers would be required to submit information for new tires at least 30 days prior to introducing the tires for sale, as is required for UTQGS information.[9]

In its petition, RMA noted that the language of the preamble and the final rule appeared to be designed to address two situations: (1) Reporting information for new tires entering the market, and (2) reporting revised rating information for existing tires. RMA recommended that NHTSA create separate requirements for these two situations and clarify the reporting requirements for each situation.

Regarding the reporting requirements for new tires, RMA supported the requirement, as stated in the preamble, that new tire information be submitted at least 30 days prior to introducing the tire for sale. Regarding the reporting requirements for revised rating information, RMA requested that NHTSA reconsider its requirement that such information be submitted no more than 30 days after the manufacturer receives information that would determine new or different rating information. RMA stated that when new information is received, the manufacturer will need time to analyze it, check its validity, and assess whether the information necessitates a change in rating information. RMA indicated that it would be impracticable to conduct such an assessment and prepare a submission to NHTSA within 30 days. RMA requested that the time period for reporting new or different rating information be revised to reflect that the 30 day period begins when the manufacturer makes a determination that a revised rating is necessary, rather than when the new information is received.

Agency Response—The agency is granting in part RMA's request to amend the ongoing reporting requirements for tire manufacturers by creating separate requirements for each type of reporting situation. The agency is also granting in part RMA's request to amend the required time period for reporting new or different rating information.

NHTSA agrees that the section of the final rule regarding ongoing reporting requirements does not clearly address the different situations where further reporting might be required following the submission of the manufacturer's initial report, *i.e.,* the introduction of new tires and the determination of new or different rating information for existing tires. Specifically, the final rule did not reflect the requirement, stated in the preamble, that manufacturers report rating information for new tires at least 30 days prior to introducing them for sale.

Accordingly, today's document amends the ongoing reporting requirements by creating separate and distinct requirements for new tire information and revised rating information. For new tire information, today's final rule adopts the requirement stated in the preambles to the NPRM and the March 2010 final rule, namely that manufacturers must report rating information for new tires to NHTSA at least 30 days prior to introducing the tires for sale. This requirement is consistent with the UTQGS requirements at 49 CFR 575.6(d)(2)(i).

However, NHTSA believes that there are two different situations that could require a revised rating. One such situation, as noted by RMA, is where a manufacturer receives information regarding an existing tire indicating that revised rating information for that tire may be necessary. In such a situation, NHTSA agrees that 30 days is an insufficient amount of time for the manufacturer to assess the validity of the information and prepare a submission to NHTSA. However, the agency continues to believe that it is in consumers' best interests to have revised rating information reported in a timely manner, and we do not believe that RMA's proposed reporting period adequately ensures the timely reporting of such information. RMA's proposed reporting period would be based on each manufacturer's own timeline for determining whether revised rating information was necessary, with no specified limit on the length of the determination period. In balancing the need for timely reporting of revised information with the need for accurate information, the agency is expanding the reporting period from 30 days to 120 days from the date that the new information is received by the manufacturer. We believe that 120 days is a reasonable amount of time for the manufacturer to assess the validity of the new information, make a determination whether the rating information for the tire needs to be revised, and submit that revised information to NHTSA.

This additional time will allow the manufacturer to analyze the new information and make a reasoned determination as to whether a revised rating is necessary. For example, a test may indicate that the rating information for an existing tire is incorrect, but further review of the test might show a test anomaly that explains the results. In such a situation, although revision of the tire's rating might have been suggested by the initial test results, such revision is not actually necessary. Accordingly, amending the reporting period will help prevent the potential reporting of inaccurate rating information by allowing the manufacturer time to determine the validity of the new information it receives.

The other situation where a rating is revised is when design changes to a tire affect the accuracy of the rating information and necessitate the submission of revised rating information. Because a design change is initiated by the manufacturer, the agency does not believe that an extended reporting period is warranted. Because this situation is comparable to the introduction of an entirely new tire, NHTSA believes that it is reasonable to require the manufacturer to evaluate the design change's effect on the tire's rating information prior to introducing the redesigned tire for sale. Accordingly, NHTSA is requiring that when a manufacturer makes a design change to a tire that affects the accuracy of the rating information for that tire, the manufacturer must report the revised rating information to NHTSA at least 30 days prior to introducing the redesigned tire for sale.

C. Reporting Requirements for Exempted Tires

EISA specifies that the tire fuel efficiency requirements are to apply only to replacement tires covered under 49 CFR 575.104(c).[10] Section 575.104 is the federal regulation that requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance. This section of NHTSA's regulations specifies the test methods to determine UTQGS, and mandates that these standards be molded onto tire sidewalls.

Section 575.104 applies only to new pneumatic tires [11] for use on passenger cars but does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or

[9] 49 CFR 575.6(d)(2)(i).

[10] 49 U.S.C. 32304A(a)(3).

[11] The term pneumatic tire is a broad one that essentially means air-filled tires (49 CFR 571.139, *New Pneumatic Radial Tires for Light Vehicles).*

less, or to limited production tires as defined in 49 CFR 575.104(c)(2). Because EISA specifies that the TFECIP requirements are to apply only to tires covered by Section 575.104, these exclusions were adopted in the NPRM and final rule.[12] Additionally, the final rule explicitly excluded replacement light truck (LT) tires from the TFECIP because they are not passenger car tires and, accordingly, are not covered by Section 575.104.

The final rule also established reporting requirements for manufacturers of these excluded types of tires, collectively referred to as ''exempted tires.'' Specifically, the final rule stated that each manufacturer must report all tire lines, size designations, and SKUs for the tires it manufactures which are exempted from the TFECIP. For manufacturers that are otherwise required to report rating information, the final rule stated that exempted tire information could be included with the rating information in the manufacturers' EWR submissions. For manufacturers that only produce exempted tires, the final rule required a one-time statement listing each one of the manufacturer's tire models (lines)/sizes, as well as a statement that each of its tire models (lines)/sizes is exempted from the applicability of the regulation and thus not rated. The preamble to the final rule explained that this information would be useful to consumers who wish to understand which tires are not rated and why, and, accordingly, would be made available on NHTSA's Web site. The agency determined that requiring the submission of such information would impose a minimal burden on manufacturers.

As discussed above, the final rule also established ongoing reporting requirements, which stated that a manufacturer who receives information that would determine new or different rating information must report the new or different rating information to NHTSA within 30 days. Additionally, the preamble to the final rule stated that when a manufacturer introduces a new tire model (line) or size that it believes to be exempted from the TFECIP, it must send a statement declaring this information to NHTSA at least 30 days before the tire is first offered for sale.

In its petition, RMA noted that the final rule could be interpreted as establishing only initial reporting requirements for exempted tires. Specifically, RMA cited to the requirement that exempted tire manufacturers submit a ''one-time statement'' listing their tires, asserting that the use of the term makes the reporting requirements unclear. RMA requested that NHTSA clarify the language of the final rule to make clear that the ongoing reporting requirements apply to exempted tire manufacturers, allowing them to amend their statements to include new exempted tires and to remove listed tires that are no longer exempted.

Agency Response—The agency is granting RMA's request to clarify the language of the reporting requirements to reflect that manufacturers of exempted tires must report information regarding new exempted tires as well as any new or different information regarding existing exempted tires.

The March 2010 final rule required that a manufacturer who only produces exempted tires submit a ''one-time statement'' listing the tires it manufactures and certifying that none of the listed tires are required to be rated. The final rule's use of the term ''one-time statement'' was meant to distinguish the reporting requirements for manufacturers that only produce exempted tires from the requirements for manufacturers that produce both exempted and rated tires. The final rule permitted these latter manufacturers to submit information regarding their exempted tires with TFECIP rating information as part of their quarterly EWR statements. Accordingly, the use of the term ''one-time statement'' was not meant to exclude manufacturers of exempted tires from the ongoing reporting requirements.

However, NHTSA agrees that the language of the final rule does not clearly address the ongoing reporting requirements of exempted tire manufacturers. Specifically, the final rule did not reflect the requirement, stated in the preamble, that manufacturers report information for new exempted tires at least 30 days prior to introducing them for sale. Additionally, the final rule only required that new or different rating information be reported after the initial reporting period and did not include any reporting requirements for new or different information regarding exempted tires. The reasoning behind requiring manufacturers to initially report information regarding their exempted tires is equally applicable to requiring manufacturers to report information for new exempted tires and new or different information for existing exempted tires. Such information would be useful to consumers who wish to understand which tires are not rated and why.

As explained above, today's final rule amends the reporting requirements for manufacturers of rated tires, eliminating the requirement that rating information be submitted with each manufacturer's EWR report, and thus removes the distinction in reporting frequency between manufacturers of both rated and exempted tires and manufacturers of only exempted tires. This final rule also amends the ongoing reporting requirements for tire manufacturers. Specifically, today's document creates separate requirements for reporting rating information for new tires and reporting new or different rating information for existing tires. Rating information for new tires and revised rating information for redesigned tires must be reported to NHTSA at least 30 days prior to introducing the tires for sale. Revised rating information for existing tires based on new information must be reported to NHTSA no more than 120 days from the date that the manufacturer receives information that would determine new or different ratings.

Because the agency's decision to separate the TFECIP reporting requirements from the EWR reporting requirements will result in a small cost increase to manufacturers, NHTSA reviewed the need for reporting information regarding exempted tires. The March 2010 final rule stated that the TFECIP does not apply to LT tires, deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or to limited production tires. The final rule required that manufacturers report information on each of these categories of tires. After further review, NHTSA has decided to limit the categories of exempted tires for which information must be reported to the agency.

The purpose of reporting information on exempted tires is that it would be useful to consumers who wish to understand which tires are not rated and why. The agency acknowledges that some categories of exempted tires are already marked in ways that will allow consumers who examine the tires to understand why rating information is not available. For example, light truck tires are marked with the letters ''LT'', ''C'', ''CP'', or ''MPT'' and space-saver or temporary use spare tires are marked with the letter ''T.'' Likewise, each tire is marked with its rim diameter, so that consumers examining the tire will be able to identify tires with nominal rim diameters of 12 inches or less. Accordingly, because these categories of

[12] We acknowledge that the technical term for rim diameter is ''rim code.'' We have chosen to use the term ''rim diameter'' because that is the term used in Section 575.104(c), the regulation from which the exempted categories of tires are adopted.

tires already display identifiable markings distinguishing them from tires covered under the TFECIP, the agency is not requiring manufacturers to report information on tires within these categories. Instead, the agency is only requiring manufacturers to report information on deep tread, winter-type snow tires [13] and limited production tires. Tires within these categories may not display markings that would allow a consumer to readily determine that they were exempt from the TFECIP.

In order to clarify that exempted tire manufacturers are also subject to the ongoing reporting requirements, this final rule amends these requirements to reflect that manufacturers must submit identifying information for all new tires in the exempted categories listed above as well as any new or different information regarding existing tires in those categories. Such new or different information would include the fact that a listed exempted tire no longer qualifies as exempted. The ongoing reporting requirements for exempted tire information are the same as those for rated tires. Information for new exempted tires and revised information for redesigned tires must be reported to NHTSA at least 30 days prior to introducing the tires for sale. Revised information for existing tires based on new information must be reported to NHTSA no more than 120 days after the manufacturer receives the new information.

D. Incorporation by Reference of ASTM E 501

In the March 2010 final rule, the agency amended § 575.3, *Matter incorporated by reference,* to include a centralized index of all of the publications incorporated into part 575. This was not intended to alter the substance of any references, but merely to consolidate all of the incorporations by reference contained in part 575. The final rule also updated the existing information in § 575.3 to include new language regarding procedures for retrieving materials from the National Archives and Records Administration and a new format indicating the sections where incorporated materials were referenced. ASTM E 501 was one of the publications referenced in part 575 prior to the promulgation of the March 2010 final rule, specifically in § 575.104(f), which describes the UTQGS test methods for traction grading. The final rule amended § 575.104(f) to reflect that ASTM E 501 was incorporated by reference, citing § 575.3.

In its petition, RMA noted that, despite the amended language of § 575.104(f), § 575.3 does not contain a citation for ASTM E 501. RMA requested that NHTSA include a citation for ASTM E 501 in § 575.3 and suggested that the reference should state the full name of the standard, ASTM E 501–8, ''Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests,'' rather than simply ASTM E 501.

Agency Response—NHTSA is granting RMA's request to include a citation for ASTM E 501 in § 575.3. Pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, when NHTSA wishes to incorporate the standards and practices of other standardizing bodies into its regulations, it may incorporate those materials by reference instead of reproducing them verbatim. It must, however, obtain the approval of the Director of the Federal Register for each such incorporation. In preparation for the publication of the March 2010 final rule, NHTSA sought and received approval from the Director of the Federal Register to incorporate by reference various publications cited in the final rule, including ASTM E 501. However, the final rule unintentionally failed to include a citation for ASTM E 501 in § 575.3. Accordingly, today's final rule adds a citation for ASTM E 501 in § 575.3. As suggested by RMA, the citation states the full name of the standard.

E. Definition of ''Replacement Passenger Car Tire''

As explained above, EISA specifies that the TFECIP requirements only apply to replacement tires covered under 49 CFR 575.104(c).[14] Section 575.104 specifies the test methods to determine UTQGS, and mandates that these standards be molded onto tire sidewalls.

Section 575.104 applies to new pneumatic tires for use on passenger cars with the exclusion of several particular types of tires.[15] Although most UTQGS requirements apply to all passenger car tires, whether sold as original equipment with a new automobile (OE tires) or as replacement tires, some apply only to replacement tires. For example, the requirement for a paper label on the tire tread excludes tires sold as original equipment on a new vehicle.[16] Based on the statutory language and NHTSA's belief that Congress intended that the agency look to the UTQGS regulation for appropriate definitions of different types of tires, NHTSA used the language of Section 575.104 as the basis for the definition of replacement tires for the purposes of the TFECIP. Accordingly, the final rule defined ''replacement passenger car tire'' to include passenger car tires other than passenger car tires sold as original equipment on a new vehicle.

In its supplemental petition for reconsideration, Bridgestone requested clarification of the definition of ''replacement passenger car tire,'' noting that, in some situations, new tires manufactured for the original equipment market are provided to consumers after the sale of a new vehicle at no cost to the consumer. According to Bridgestone, these tires are only available to tire retailers/installers to replace original equipment tires with the same specifications and are provided at no cost to the consumer pursuant to the terms of a consumer warranty contract or contractual agreement between the vehicle manufacturer and the tire manufacturer, or as an act of goodwill extended by the manufacturer or retailer. Bridgestone asked whether such tires are considered replacement tires under the final rule.

Agency Response—On reconsideration, NHTSA believes that tires that are only available to replace original equipment tires at no cost to consumers should not be considered replacement tires for the purposes of the TFECIP. The TFECIP is intended to inform consumers about the effect of their choices among replacement passenger car tires on fuel efficiency, safety, and durability. Section 111 of EISA explicitly states that the purpose of the national TFE rating system is to assist consumers in making more educated tire purchasing decisions.[17] The types of tires described by Bridgestone are not available to consumers looking to purchase tires. Instead, these types of tires are provided at no cost to consumers to replace original equipment tires with the same specifications. Therefore, NHTSA believes that these types of tires are not within the intended scope of the TFECIP, and, accordingly, the agency is amending the definition of ''replacement passenger car tire'' to reflect that only passenger car tires that are offered for sale to consumers are

[13] The agency notes that manufacturers may voluntarily use an ''Alpine Symbol'' to label certain tires that attain a particular traction index when using a specified snow traction test. 49 CFR 571.139. However, as use of the symbol is voluntary, NHTSA believes that requiring information on these types of tires to be reported is necessary to ensure that all deep tread, winter-type snow tires are identified as exempt from the rating requirements of the TFECIP.

[14] 49 U.S.C. 32304A(a)(3).

[15] 49 CFR 575.104(c)(1).

[16] 49 CFR 575.104(d)(1)(i)(B).

[17] 49 U.S.C. 32304A(a)(2)(A).

considered replacement tires for the purposes of the program.

F. Issues Not Decided by the March 2010 Final Rule

The March 2010 final rule stated that the agency was delaying decision on a number of issues related to the TFECIP and would publish a supplemental NPRM addressing these issues. Among the issues not decided in the final rule were the rolling resistance metric to be used to determine the fuel efficiency rating, the determination of fuel efficiency, safety, and durability ratings from the performance information generated by the test methods, the selection of a reference laboratory and lab alignment tires to implement the rolling resistance test methods under ISO 28580, and the lead time for compliance with the final rule.

In its petition, RMA offered comments on these issues and requested an opportunity to review future rules related to the TFECIP and potentially petition for reconsideration on areas covered by the March 2010 final rule that are affected by such future rules.

Agency Response—Because the remaining issues commented on by RMA are outside the scope of the final rule, the agency will consider these comments in future rulemaking activities.

III. Regulatory Notices and Analyses

This rule makes several changes to the regulatory text of 49 CFR part 575. The agency has already discussed the relevant requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211 (Energy Effects) in the March 2010 final rule. Those discussions are not affected by these changes.

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document amends the reporting requirements of the TFECIP. The agency has already prepared a FRIA for the March 2010 final rule and placed it in the docket for that rule as well as the agency's Web site. The agency believes that the estimated reporting costs contained in the FRIA accurately reflect the expected reporting costs with the modifications made in today's final rule. These costs include start-up costs of almost $400,000, and annual reporting costs of approximately $113,000. For a further explanation of the estimated costs, see the FRIA provided in the docket for the March 2010 final rule.

B. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule amends the reporting requirements for tire manufacturers under the new consumer information program at 49 CFR Part 575.106, *Tire fuel efficiency consumer information program.* Accordingly, NHTSA is submitting a request to OMB for approval of the following collection of information.

In compliance with the PRA, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden. This is a request for new collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR part 575.106, Tire fuel efficiency consumer information program.

Type of Request: New collection.

OMB Clearance Number: Not assigned.

Form Number: The collection of this information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

In the March 30, 2010 final rule, NHTSA established reporting requirements for the TFECIP. In response to petitions for reconsideration, NHTSA is amending those requirements. Tire manufacturers and tire brand name owners would be required to rate all replacement passenger car tires for fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear), and to submit identification information and ratings for each tire to NHTSA. The ratings for safety and durability are based on test procedures specified under the UTQGS traction and treadwear ratings requirements. The required identification information for rated tires includes the manufacturer's name, the brand name owner (if different than the manufacturer), the tire line, the SKU, and the tire size. Additionally, manufacturers and tire brand name owners would be required to submit information on the tire lines, SKUs, and size designations for certain exempted tires that they produce.

The information would be used by consumers of replacement passenger car tires to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions. Information on exempted tires would be used to inform consumers which tires are not rated and why.

Description of the Need for the Information and Use of the Information

NHTSA needs the information to provide consumers information in order to allow them to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions. NHTSA needs the information on certain exempted tires to inform consumers which tires are not rated and why. Tires within these categories may not display markings that would allow a consumer to readily determine that they were exempt from the TFECIP.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

There are approximately 28 manufacturers of replacement passenger car tires sold in the United States. Each manufacturer would be required to submit to NHTSA a one-time list containing identification and rating information for each covered tire it manufactures as well as identification information for certain exempted tires it produces. Additionally, each manufacturer would be required to submit the same information for each new tire it introduced, as well as any new or different information for its existing tires.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

NHTSA believes that the estimated reporting costs contained in the final rule accurately reflect the expected reporting costs with the modifications made in today's final rule. The agency estimates that there are 28 tire manufacturers that will be required to report information. Each of these will need to set up the software in a computer program to combine the testing information, organize it for NHTSA's use, *etc.* We estimate this cost to be a one-time charge of about $10,000 per company. Based on the costs used in the Early Warning Reporting Regulation analysis,[18] we estimate the annual cost per report per tire manufacturer to be $287. There are also computer maintenance costs of keeping the data up to date, *etc.,* as tests come in throughout the year. In the EWR analysis, we estimated costs of $3,755 per year per company. Thus, the total annual cost is estimated to be $4,042 per company. Accordingly, the total costs would be $280,000 + $113,176 = $393,176 for the first year and $113,176 as an annual cost for the 28 tire manufacturers.

The largest portion of the cost burden imposed by the TFECIP arises from the testing necessary to determine the ratings that should be assigned to the tires. As detailed in the FRIA, our per-SKU costs to test for rolling resistance, traction, and treadwear amount to $1,180 (*i.e.* $180 + $500 + $500). This would result in testing costs of $22,420,000 in the first year (19,000 SKUs) and $3,801,960 in subsequent years (3,222 new SKUs annually).

The estimated annual cost to the Federal government is $1.28 million. This cost includes $730,000 for enforcement testing, and about $550,000 annually to set up and keep up to date a Web site that includes the information reported to NHTSA. Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- 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.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **Federal Register**.

The agency recognizes that the collection of information contained in today's final rule may be subject to revision in response to public comments and the OMB review.

C. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

D. 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 organization, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR part 575 as follows:

PART 575—CONSUMER INFORMATION

■ 1. The authority citation of part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

■ 2. Amend § 575.3 by redesignating paragraphs (c)(1) and (c)(2) as (c)(2) and (c)(3), respectively, and adding new paragraph (c)(1) to read as follows:

§ 575.3 Matter incorporated by reference.

* * * * *

(c) * * *

(1) ASTM E 501–08 (''ASTM E 501''), ''Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests'' (June 2008), IBR approved for § 575.104 and § 575.106.

* * * * *

■ 3. Amend § 575.106 by adding, in alphabetical order, the following definition of ''Manufacturer'' in paragraph (d)(2), revising the definitions of ''Replacement passenger car tire'' and ''Tire line'' in paragraph (d)(2), and revising paragraphs (e)(1)(i)(C)(*1*) through (*4*) to read as follows:

§ 575.106 Tire fuel efficiency consumer information program.

* * * * *

(d) * * *

(2) * * *

Manufacturer means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

* * * * *

Replacement passenger car tire means any passenger car tire offered for sale to consumers, other than a passenger car tire sold as original equipment on a new vehicle.

* * * * *

Tire line means the entire name used by a tire manufacturer to designate a tire product including all prefixes and suffixes as they appear on the sidewall of a tire.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(C) * * *

(*1*) Subject to paragraph (e)(1)(iii) of this section, manufacturers of tires or, in the case of tires marketed under a brand name, brand name owners of tires subject to this section shall submit to NHTSA, either directly or through an agent, the following data for each rated replacement passenger car tire:

(*i*) Manufacturer or Brand name owner.

(*ii*) Tire line.

(*iii*) SKU.

(*iv*) Tire size.

(*v*) Rolling resistance rating, as determined in paragraph (e)(2)(i) of this section.

[18] Preliminary Regulatory Evaluation, Tread Act Amendments to Early Warning Reporting Regulation Part 579 and Defect and Noncompliance Part 573, August 2008 (Docket No. NHTSA–2008–0169–0007.1).

(*vi*) Wet traction rating, as determined in paragraph (e)(2)(ii) of this section.

(*vii*) Treadwear rating, as determined in paragraph (e)(2)(iii) of this section.

(*2*) *Format of data submitted.* The information required under paragraph (e)(1)(i)(C)(*1*) of this section may be submitted to NHTSA by mail, by facsimile, or by email. Submissions by mail must be addressed to the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, Attention: Consumer Standards Division (NVS–131), 1200 New Jersey Avenue SE., Washington, DC 20590. Submissions by facsimile must be addressed to the Associate Administrator for Rulemaking and transmitted to (202) 366–7002. Submissions by email must be sent to *TFE.Reports@dot.gov.*

(*3*) *Exempted tires.*

(*i*) Each manufacturer of tires or, in the case of tires marketed under a brand name, brand name owner of tires subject to this section shall submit to NHTSA all tire lines, size designations, and stock keeping units for deep tread, winter-type snow tires and limited production tires that it manufactures which are exempt from this section (§ 575.106) under paragraph (c) of this section.

(*ii*) Where a manufacturer or brand name owner is required to report ratings under this section, the information required in paragraph (e)(1)(i)(C)(*3*)(*i*) of this section may be submitted with the ratings information reported in accordance with paragraph (e)(1)(i)(C)(*1*) of this section.

(*iii*) Where a tire manufacturer or, in the case of tires marketed under a brand name, brand name owner only manufactures tires that are exempt from this section under paragraph (c) of this section, that manufacturer or brand name owner shall submit a statement listing the information specified in paragraph (e)(1)(i)(C)(*3*)(*i*) of this section and certifying that none of the tires it manufactures are required to be rated under this section.

(*4*) *New ratings information.*

(*i*) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner introduces a new tire for sale, the tire manufacturer or brand name owner shall submit either the information required under paragraph (e)(1)(i)(C)(*1*) of this section or the information required under paragraph (e)(1)(i)(C)(*3*) of this section for the tire to NHTSA on or before the date 30 calendar days before the tire is first introduced for sale.

(*ii*) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner makes a design change to a tire that would result in new or different information required under either paragraph (e)(1)(i)(C)(*1*) or paragraph (e)(1)(i)(C)(*3*) of this section for the tire, the tire manufacturer or brand name owner shall submit the new or different information to NHTSA on or before the date 30 calendar days before the redesigned tire is first introduced for sale.

(*iii*) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner receives information that would determine new or different information required under either paragraph (e)(1)(i)(C)(*1*) or paragraph (e)(1)(i)(C)(*3*) of this section for a tire, the tire manufacturer or brand name owner shall submit the new or different information to NHTSA on or before the date 120 calendar days after the receipt of the new information by the tire manufacturer or brand name owner.

* * * * *

Issued on: December 14, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–32433 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BB65

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) January 1, 2012. Comments on this final rule must be received no later than January 20, 2012.

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA–NMFS–2010–0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (206) 526–6736, Attn: Colby Brady.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Colby Brady.

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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: (206) 526–6117, fax: (206) 526–6736, *colby.brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2010, NMFS published a

proposed rule to implement the 2011–2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by inseason actions on June 30, 2011 (76 FR 38313) and October 31, 2011 (76 FR 67092). Additional changes to the 2011–2012 specifications and management measures were made in a final rule on May 19, 2011 (76 FR 28897), an interim final rule on June 15, 2011 (76 FR 34910), and in a correcting amendment on September 2, 2011 (76 FR 54713). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule is effective January 1, 2012. These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with the States of Washington, Oregon, and California, at its November 2–November 6, meeting in Costa Mesa, California. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and other inseason management needs. These changes include: adoption of regulations that would create a lingcod recreational fishing closure off Washington to conform with state regulations; adjustment of the trawl RCA boundaries; and changes to the sablefish and minor nearshore and black rockfish cumulative limits in commercial fixed gear fisheries off Washington, Oregon, and California. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2012. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Review of 2011–2012 Fisheries and Setting Management Measures for the Remainder of the Biennium

At its November 2011 meeting, the Council reviewed the 2011 commercial groundfish fisheries by considering: (1) The fishery management measures initially set for 2011, (2) modifications to management measures that were needed inseason for 2011, as new data became available throughout the 2011 season, and (3) retrospective total catch pattern data from the 2011 year-to-date.

The Council's goal in scrutinizing the 2011 groundfish fisheries was to develop a set of management measures for the remainder of the biennial period that would take into account new knowledge gained in 2011 to better structure the fisheries for the remainder of the 2011–2012 biennium. The improved structure of the initial 2012 management measures was designed to continue to keep total catch of managed species liberal enough to allow the catch of target species to approach, but not exceed, their 2012 ACLs, yet be conservative enough to reduce the need for inseason restrictions. The changes also allow the industry to plan for their 2012 fishing season(s) and ensure that management measures in place for the remainder of the biennial period reflect the best available science.

Washington Recreational Groundfish Fishery Management Measures

The State of Washington manages canary and yelloweye rockfish under a harvest guideline for their recreational fisheries. The state modifies portions of their recreational fisheries, through inseason adjustment to state regulations, in order to keep catch within the harvest guidelines for canary and/or yelloweye rockfish.

During 2011, the Washington State Department of Fish and Wildlife (WDFW) received reports of higher than anticipated yelloweye rockfish and canary rockfish bycatch due to increased interest from recreational sport and charter boat fleets targeting lingcod and bottomfish in deep water ocean areas off the Washington south coast and Columbia River management areas. The state took emergency action to close portions of Washington Marine Areas 1 and 2 to recreational fishing to ensure that recreational yelloweye rockfish and canary rockfish impacts stay below the recreational harvest guideline in 2011 and beyond. Following the emergency state action, WDFW worked with charter boat and sport fishing representatives in both Westport and Ilwaco to develop areas that are recommended for permanent closure to lingcod fishing for 2012 and after.

WDFW requested that the Council adopt inseason changes to conform with the lingcod closures in Marine Areas 1 and 2 to ensure that harvests of canary and yelloweye rockfish stay within Washington harvest guidelines in 2012 and beyond.

Therefore, the Council recommended, and NMFS is implementing, a lingcod recreational fishery area closure as follows: lingcod fishing is prohibited year round, except in Marine Area 2 on days when the Pacific halibut fishery is open, in the area seaward (West) of a straight line connecting all of the following points in the order stated: 47°31.70′ N. lat., 124°45.00′ W. long.; 46°38.17′ N. lat., 124°30.00′ W. long.; 46°38.17′ N. lat., 124°21.00′ W. long.; and 46°25.00′ N. lat., 124°21.00′ W. long.

Trawl Rockfish Conservation Area

The Council recommended, and NMFS is implementing, an adjustment to the seaward line of the trawl Rockfish Conservation Area (RCA) in Washington State, south of Cape Alava and in northern Oregon, north Cape Falcon from the 200 fathom line (366-m) to the 150 fathom line (274-m) for Period 2, (March 1–April 30).

The Council received a request to review the effects of an adjustment to the seaward boundary line of the trawl RCA south of 48° 10′ N. lat and north of 45° 46′ N. lat. from 200 fm to 150 fm for Period 2, (March 1–April 30) to open some additional slope areas. The Council considered time-weighted historical average bycatch rates stratified by depth for this area in Period 2. Encounter rates of overfished species would be slightly increased for darkblotched rockfish, Pacific ocean perch, widow rockfish and yelloweye rockfish. Catch of these species in the trawl fishery is now managed with Individual Fishing Quota (IFQ). The Council considered that fishing behavior and bycatch rates are likely to be different than those observed prior to the IFQ fishery because of the individual accountability inherent in the IFQ program. The Council also considered how mortality of these species in the 2011 IFQ fishery is very low, at 17 percent, 19 percent, 35 percent, and 6 percent, respectively (as of October 11, 2011).

Therefore, the Council recommended and NMFS is implementing a shift in the seaward boundary of the trawl RCA for the area south of 48°10′ N. lat (Cape Alava) to north of 45°46′ N. lat. (Cape Falcon) by shifting the seaward boundary of the trawl RCA boundary

from the boundary line approximating the 200 fathom (fm) (366-m) depth contour to the boundary line approximating the 150 fm (274-m) depth contour for Period 2 (March 1 through April 30) of 2012.

Limited Entry Fixed Gear and Open Access Sablefish Daily Trip Limit (DTL) Fishery Management Measures

Based on the Council's goals in reviewing 2011 fishery data, as described above, the Council considered the various adjustments to fishery management measures in the limited entry fixed gear and open access fisheries that were necessary during the first ten months of the 2011–2012 biennium at its November 2011 meeting. The Council and its advisory bodies considered the most recent information on the status of 2011 fisheries and requests from industry and provided the following recommendations for inseason adjustments for the remainder of the biennium.

Limited Entry Fixed Gear Sablefish DTL Fishery North of 36° N. Lat.

At its March 2011 meeting, the Council took action to reduce limits in the limited entry fixed gear sablefish DTL fishery north of 36° N. lat. This recommendation was precautionary, in response to the discovery of an error in the methods that were used to estimate landings of sablefish in the DTL fishery. At its June 2011 meeting, the Council considered corrected catch estimates and made further restrictions to trip limits in this fishery to keep projected catch through the end of the year within the fishery harvest guideline and to prevent exceeding the non-trawl fishery allocation for sablefish in 2011.

At its November 2011 meeting, the Council considered stable trip limits for periods 1–6 for the limited entry fixed gear fisheries north of 36° N. lat. for 2012. Trip limits for 2012 were estimated by the GMT using landings projection models adjusted for discard mortality with the most recent available data. The updated trip limits that the Council considered for 2012 are anticipated to achieve, but not exceed, the fishery harvest guideline for sablefish in 2012. Furthermore, a stable trip limit approach will help provide consistency, safety, and predictability to fishing communities.

West Coast Groundfish Observer data indicate that the trip limits recommended for periods 1–6 are not anticipated to increase projected impacts of co-occurring overfished groundfish species.

Therefore, the Council recommended, and NMFS is implementing, the following changes to trip limits for the limited entry fixed gear sablefish DTL fishery north of 36° N. lat.: change to ''1,300 (590 kg) lb per week, not to exceed 5,000 (2268 kg) lb per 2 months'' in periods 1–6, on January 1, through the end of the year.

Open Access Sablefish DTL Fishery North of 36° N. Lat.

The Council recommended, and NMFS is implementing, stable trip limits for periods 1–6 for the open access DTL fisheries north of 36° N. lat. for 2012. Appropriate trip limits for 2012 were estimated by the GMT using landings projection models adjusted for discard mortality with the most recent available data. A stable trip limit approach will help provide consistency, safety, and predictability to fishing communities.

West Coast Groundfish Observer data indicate that the stable trip limits recommended for periods 1–6 are not anticipated to increase projected impacts of co-occurring overfished groundfish species.

Therefore, the Council recommended, and NMFS is implementing, the following changes to the open access sablefish DTL fishery trip limits north of 36° N. lat.: change to ''300 lb (136 kg) per day, or 1 landing per week of up to 900 lb (408 kg), not to exceed 1,800 lb (817 kg) per 2 months'' in periods 1–6, on January 1, through the end of the year.

Sablefish DTL Fisheries South of 36° N. Lat.

The Council recommended, and NMFS is implementing, stable trip limits for periods 1–6 for the limited entry fixed gear and open access DTL fisheries south of 36° N. lat. for 2012. Appropriate trip limits for 2012 were estimated by the GMT using landings projection models adjusted for discard mortality with the most recent available data. A stable trip limit approach will help provide consistency, safety, and predictability to fishing communities.

West Coast Groundfish Observer data indicate that the stable trip limits recommended for periods 1–6 are not anticipated to increase projected impacts of co-occurring overfished groundfish species.

Therefore, the Council recommended and NMFS is implementing the following changes to open access fishery trip limits south of 36° N. lat.: change to ''300 lb (136 kg) per day, or 1 landing per week of up to 1,350 lb (614 kg), not to exceed 2,700 lb (1,227 kg) per 2 months'' in periods 1–6, on January 1, through the end of the year. NMFS is also implementing the following changes to limited entry fixed gear trip limits south of 36° N. lat.: change to ''1,800 (817 kg) lb per week'' in periods 1–6, on January 1, through the end of the year.

Minor Nearshore and Black Rockfish Trip Limits Between 42° N. Lat. and 40°10.00′ N. Lat.

Black rockfish is a nearshore rockfish species that was assessed in 2007 as two separate stocks north and south of 45°56′ N. lat., and therefore the harvest specifications are divided at the Washington/Oregon border (46°16.00′ N. lat.). The biomass north of 45°56′ N. lat. was estimated to be at 53 percent of its unfished biomass, while the biomass south of 45°56′ N. lat. was estimated to be 70 percent of its unfished biomass in 2007. The 2012 black rockfish ACL for the area south of 46°16.00′ N. lat. was set at 1,000 mt, which is a constant catch strategy designed to keep the biomass above 40 percent of its estimated unfished biomass. The black rockfish ACL in the area south of 46°16.00′ N. lat. is subdivided with separate harvest guidelines (HGs) being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent). Oregon and California work cooperatively to manage their nearshore fisheries (both commercial and recreational) to approach but not exceed the black rockfish ACL in the area south of 46°16.00′ N. lat. The 2012 black rockfish commercial allocation for California is 185 mt.

At their November 2011 meeting, the Council considered the most recent limited entry fixed gear and open access nearshore fishery information, and recommended that the increased and restructured limit that was implemented during 2011, March–December (Periods 2–6), remain in place for the entire 2012 calendar year, beginning on January 1, 2012. The change allows for increased landings of black rockfish beginning in period 1, on January 1 of 2012, through the end of the year.

Blue rockfish sub-limits and have been shown to be an effective management tool for commercial nearshore fixed gear fishery efforts to target the abundant black rockfish resource with negligible bycatch of blue rockfish or other non-targeted overfished rebuilding species, especially in conjunction with California state 20 fathom depth restrictions. Modest increases to the minor nearshore rockfish trip limits in the limited entry fixed gear and open access fisheries in Period 1 (January 1–February 31) are not anticipated to increase impacts to co-occurring overfished rockfish because

projected impacts to overfished species are calculated assuming that up to 82 mt of black rockfish are harvested, which is an amount larger than historically seen and larger than anticipated under the new trip limits.

Therefore, the Council recommended, and NMFS is implementing, an increase to the minor nearshore rockfish trip limit, between 42° N. lat. and 40°10′ N. lat. from ''6,000 lb (2,722 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish'' to ''8,500 lb (3,856 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish'' beginning in period 1, on January 1 of 2012, through the end of the year.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are also taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its November 2–6, 2011, meeting in Costa Mesa, California. The Council recommended that these changes be implemented by January 1, 2012 or as quickly as possible thereafter. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California and recreational fisheries off Washington.

These adjustments to management measures must be implemented in a timely manner: to create a Washington State lingcod recreational fishing area closure prior to the March 17 opening of the recreational fishery; to allow additional flexibility for fishermen subject to the limited entry trawl RCA; and to allow fishermen an opportunity to harvest available catch limits in 2012 for sablefish, minor nearshore and black rockfish, under stable cumulative limits in limited entry fixed gear and open access fisheries. These changes must be implemented in a timely manner, as early as possible in 2012, so that fishermen are allowed increased opportunities to harvest available healthy stocks, and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, ACLs. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change in January 1, 2012 allows additional harvest in fisheries that are important to coastal communities.

These adjustments to management measures must also be implemented in a timely manner to prevent 2012 ACLs from being exceeded, to prevent premature closure of the fishery. Cumulative limits cover a two-month period, so if implementation is delayed much past January 1, fishermen could be prevented from access to harvest abundant black rockfish stocks due to lower than necessary limits before the revised limit is effective.

Delaying these changes would also keep management measures in place that are not based on the best available data. Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: December 15, 2011.

Steven Thur,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 1 (North) to part 660, subpart D is revised to read as follows:

BILLING CODE 3510–22–P

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[1/] - modified[2/] 200 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	
3	45°46' N. lat. - 40°10' N. lat.		75 fm line1/ - 200 fm line1/	75 fm line[1/] - 200 fm line[1/]	100 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - modified[2/] 200

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
5	**Whiting**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/ month
13	**Longnose skate**	Unlimited
14	**Other Fish [3/]**	Unlimited

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Tables 2 (North) and 2 (South) to part 660, subpart E are revised to read as follows:

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,300 lb. per week, not to exceed 5,000 lb/ 2 months					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[1/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
22	42° - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish 3/					
23	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other fish[5/]**	Unlimited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,300 lb/ week, not to exceed 5,000 lb/ 2 months					
7	South of 36° N. lat.	1,800 lb/ week					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 2 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months			
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[7/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/]	Unlimited						

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Tables 3 (North) and 3 (South) to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
5	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months					
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[2/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
21	42° - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish [3/]					
22	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Other Fish[5/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months					
9	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,350 lb, not to exceed 2,700 lb/ 2 months					
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/]	Unlimited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line* [6/]	*100 fm line*[5/] *- 150 fm line*[5/]				*100 fm line*[5/] *- 200 fm line*[5/ 6/]
43	*38° - 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/]					
44	*South of 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/] *along the mainland coast; shoreline - 150 fm line*[5/] *around islands*					
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

■ 5. In § 660.360, paragraphs (c)(1)(i)(D)(*2*) and (c)(1)(i)(D)(*3*) are revised to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *
(1) * * *
(i) * * *
(D) * * *

(*2*) Between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish, except lingcod, is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: Recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. Between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 47°31.70′ N. lat., 124°45.00′ W. long.; 46°38.17′ N. lat., 124°30.00′ W. long with the following exceptions: on days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the RCA. Days open to

Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30 fm (55 m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*3*) Between Leadbetter Point (46°38.17′ N. lat.) and the Washington/Oregon border (Marine Area 1), when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod from May 1 through September 30. Between Leadbetter Point (46°38.17′ N. lat.) and 46°25.00′ N. lat., recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 46°38.17′ N. lat., 124°21.00′ W. long.; and 46°25.00′ N. lat., 124°21.00′ W. long.

* * * * *

[FR Doc. 2011–32691 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 245
Wednesday, December 21, 2011

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 ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: This document announces a reopening of the comment period for interested parties to submit comments on the October 24, 2011 supplemental notice of proposed rulemaking for residential central air conditioner and heat test procedures. The comment period is extended until January 20, 2012.

DATES: The U.S. Department of Energy (DOE) will accept comments, data, and information regarding the supplemental notice of proposed rulemaking for residential central air conditioner and heat test procedures received no later than January 20, 2012.

ADDRESSES: Any comments submitted must identify the Supplemental Notice of Proposed Rulemaking for Test Procedures for Residential Central Air Conditioners and Heat Pumps and provide docket number EERE–2009–BT–TP–0004 and/or RIN number 1904–AB94. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Brenda.Edwards@ee.doe.gov.* Include docket number EERE–2009–BT–TP–0004 and/or RIN 1904–AB94 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2009-BT-TP-0004.* This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a public comment, review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *Wes.Anderson@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On October 24, 2011, the U.S. Department of Energy (DOE) published a supplemental notice of proposed rulemaking (SNOPR) in the **Federal Register** (76 FR 65616) which proposed amendments to the laboratory test steps and calculation algorithm that would be used to determine off-mode power consumption for residential central air conditioners and heat pumps. Specifically, the SNOPR proposed to measure a system's off-mode power consumption at two temperatures, 82 °F and 57 °F, and then average the two measurements to determine the system's off-mode rating. The SNOPR required that interested parties submit any written comments by November 23, 2011. In response to the SNOPR, the California State Investor Owned Utilities (CA IOUs), which is appended to this notice, expressed concern about a potential loophole regarding the 57 °F test point in DOE's proposal. With the lower test point at 57 °F, it is possible for a system to be controlled in such a manner that the crankcase heater is not on at either test point, but comes on just below 57 °F. The result would be an underestimation of a system's energy consumption because the energy consumption of the crankcase heater would not be included in either measurement.

Consequently, the CA IOUs recommended an alternative approach to the test procedure proposed in the SNOPR. According to this approach, manufacturers would be required to specify the temperatures at which a crankcase heater turns on and off, and then to run one off-mode test 3–5 °F below the point at which the crankcase heater turns on and the other off-mode test 3–5 °F above the temperature at which the crankcase heater turns off. (CA IOUs, No. 33 at p. 2) American Council for an Energy-Efficient Economy (ACEEE), the Appliance Standards Awareness Project (ASAP), Northwest Energy Efficiency Alliance (NEEA) and Northwest Power Conservation Council (NPCC) all supported this approach. (ACEEE & ASAP, No. 34 at p. 2; NEEA & NPCC, No. 35 at p. 3)

DOE believes that this proposed approach is advantageous for multiple reasons. It will prevent the potential inaccuracies involved with requiring 57 °F as the only test point in the DOE

procedure. If DOE requires just one temperature set point for all tested equipment, a potential exists that manufacturers may choose to change the temperature at which the crankcase heater turns on solely for testing purposes, resulting in an inaccurate power consumption measurement. Further, different crankcase heater manufacturers may employ different control strategies, which vary with temperature. The approach recommended by CA IOUs provides additional flexibility by allowing manufacturers to design controls schemes for the crankcase heaters at whatever temperature they feel is necessary to avoid damage to the compressor in cold outdoor temperatures.

While this approach will not change the tested results in the SNOPR, it will help to reduce the complexity of test procedure because the crankcase heater will be on for one temperature test point and off for the other. Further, depending on the manufacturer's specified crankcase heater on and off temperatures, the testing burden may be reduced under this recommended test method as compared to the method proposed in the SNOPR. Consequently, DOE is strongly considering the adoption of this approach and specifically seeks comment on any aspect of this approach.

In order to provide interested parties with adequate time to review and respond to this alternative test method as outlined by the CA IOUs in section 1 of their comment, DOE has determined that a re-opening of the public comment period is appropriate and has printed the CA IOUs comment concurrently with this notice in the **Federal Register**. DOE will consider any comments received on January 20, 2012, and deems any comments received between November 23, 2011 and January 20, 2012 to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on December 14, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

November 22, 2011

Ms. Brenda Edwards, EE–41, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121

Docket Number: EERE–2009–BT–TP–0004

RIN: 1904–AB94

Dear Ms. Edwards: This letter comprises the comments of the Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE) in response to the Department of Energy (DOE) Supplementary Notice of Proposed Rulemaking (SNOPR) for the Off Mode Test Procedure for Residential Central Air Conditioners and Heat Pumps.

The signatories of this letter represent some of the largest utility companies in the Western United States, serving over 29 million customers. As energy companies, we understand the potential of appliance efficiency standards to cut costs and reduce consumption while maintaining or increasing consumer utility of the products. We have a responsibility to our customers to advocate for standards that accurately reflect the climate and conditions of our respective service areas, so as to maximize these positive effects.

We acknowledge the difficulty faced by the Department to finalize test method procedures for Residential Central Air Conditioners and Heat Pumps given the lack of available data and engineering analysis applied to the development of these test methods. We are concerned that the test procedure revisions presented in this SNOPR would not encourage innovative design of the heating system in off-mode and are misleading to consumers since reported values are not indicative of actual off-mode energy use.

Therefore, we ask DOE to postpone finalizing the test procedure so that more engineering analysis and data can be provided by the PG&E, SCE, the efficiency advocates, and other stakeholders to inform DOE on accurate updates to the test procedure.

The current test procedures focus on wattage and simple work-arounds to account for *potentially* more efficient designs, such as those with multiple compressors. We believe that the test procedure should calculate energy use, as opposed to power consumption associated with off-mode since the run time in off-mode for these units is substantial. It is possible that units with slightly more power consumption levels in off mode consume less overall energy since some of those controls serve to reduce run-time; design strategies like these are not only overlooked, but not encouraged with this type of measurement of off-mode power.

Moreover, we believe that these test method procedures may be substantially improved upon with more data gathering and engineering analysis, supported by the CA IOUs, other energy efficiency advocates, ASHRAE, and AHRI. We suggest that DOE conduct market analysis to provide a better understanding across a range of products the temperature set points for which the crankcase heater turns on and off. We also suggest DOE collect actual test data using the test procedures on an array of products to understand anticipated outputs.

If DOE plans to move forward with the proposal in the SNOPR, we urge DOE to consider the following recommendations:

1) Manufacturers should report ambient air temperature points for which the crankcase heater is on and off, and use those points when calculating off-mode.

We are concerned that manufacturers could game the test procedures for off-mode power consumption by designing crank case heaters that operate outside the assumed bound for the crank-case heater being on at an ambient air temperature of 57 degrees Fahrenheit (F). Moreover, we think the test procedure would be more accurate if manufacturers tested their products at the points at which the crankcase heater is certain to be on (P2) and off (P1). Thus we recommend that DOE require that manufacturers report these values, and then establish the test temperature to be 3–5 degrees F below the point at

which it turns on, and 3–5 degrees above the point at which it turns off.

2) Instead of applying a simple average to P1 & P2 to calculate off-mode power draw, DOE should apply a weighted average reflective of the amount of time the crankcase heater is on and off.

We are concerned that a simple average of P1 & P2 could drastically under represent off-mode power draw. Using National Oceanic and Atmospheric Administration (NOAA) [1] data on temperature averages between 1971–2000 for 100 U.S. cities, we found that 54% of the tested sample had average annual temperatures below 57 degrees F for the months of January, April, and October, or simplifying the matter, 3 out of 4 seasons or 75% of the year. If we assume that the majority of these units are located in uncooled and unheated spaces then we may also assume that 75% of the time the unit will operate under P2 (on) conditions, and 25% of the time it will operate under P1 (off) conditions. We recommend that DOE adopt this weighted average or conduct further testing to determine how often a crankcase heater is on versus off at different ambient temperature ranges and apply national average temperatures across the seasons to determine an appropriate weighted average.

3) DOE should not adjust the off-mode power draw for systems with multiple compressors or apply a scaling factor for extra-large systems since this would not represent actual off-mode power consumption.

We strongly recommend against the use of a scaling factor for extra-large units and for systems with multiple compressors since this would under represent the actual power associated with off-mode. While we understand that DOE does not want to penalize units that may have more energy efficient designs, we do not think that it is appropriate to apply this work-around to the measurement of off-mode. The merits of the *potentially* increased efficiency during run-mode ought to be captured in the run-mode test method, and not in the off-mode calculation. Moreover, we are concerned that these changes will make it easy for almost any unit on the market to meet the standard, thereby negating the point of a standard in the first place. Finally, the test procedure should be designed to report the actual value of off-mode. These values should be evaluated in a future standards rulemaking.

[1] http://*www.infoplease.com/ipa/A0762183.html*, Date Accessed: 11/14/11.

For these reasons, we strongly encourage DOE to revisit this test method with the help from stakeholders in the rulemaking to develop more appropriate test procedures. For instance, there has been discussion at utilities to conduct indepth testing of heat pumps and central air conditioning units in the coming months. We ask that DOE seriously consider postponing this final rule to assess stakeholder interest in improving the test method.

In conclusion, we would like to reiterate our support to DOE for updating the test procedures for residential central air conditioners and heat pumps. We thank DOE for the opportunity to be involved in this process and encourage DOE to carefully consider the recommendations outlined in this letter.

Sincerely,

Rajiv Dabir,
Manager, Customer Energy Solutions, Pacific Gas and Electric Company.

Ramin Faramarzi, PE,
Manager, Technology Test Centers, Southern California Edison, Design & Engineering Services.

[FR Doc. 2011–32620 Filed 12–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1358; Airspace Docket No. 11–ANM–19]

RIN 2120–AA66

Proposed Establishment of Area Navigation (RNAV) Routes; Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish nine new RNAV routes originating within Seattle Air Route Traffic Control Center's (ARTCC) airspace. The routes would extend generally east-west providing connection between the Seattle, WA, terminal area and destinations east and southeast of Seattle and would enhance en route navigation within the National Airspace System (NAS).

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–1358 and Airspace Docket No. 11–ANM–19 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1358 and Airspace Docket No. 11–ANM–19) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1358 and Airspace Docket No. 11–ANM–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish nine new high altitude RNAV routes (Q–140, Q–142, Q–144, Q–146, Q–148, Q–150, Q–152, Q–154 and Q–156) originating in Seattle ARTCC's airspace. The proposed routes would connect the Seattle terminal area with destinations east and southeast of Seattle. This action would enhance en route navigation for users, and expand the use of RNAV within the NAS.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as required to preserve the safe and efficient flow of air traffic.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States area navigation routes

* * * * *

Q–140 WOBED, WA to EEGEE, WI [New]

WOBED, WA	WP	(Lat. 48°36′01″ N., long. 122°49′47″ W.)
GETNG, WA	WP	(Lat. 48°25′31″ N., long. 119°31′39″ W.)
CORDU, ID	WP	(Lat. 48°10′46″ N., long. 116°40′22″ W.)
PETIY, MT	WP	(Lat. 47°58′47″ N., long. 114°36′20″ W.)
CHOTE, MT	INT	(Lat. 47°39′57″ N., long. 112°09′38″ W.)
LEWIT, MT	WP	(Lat. 47°23′00″ N., long. 110°08′45″ W.)
SAYOR, MT	INT	(Lat. 47°13′58″ N., long. 104°58′39″ W.)
WILTN, ND	INT	(Lat. 47°04′58″ N., long. 100°47′44″ W.)
TTAIL, ND	WP	(Lat. 46°41′28″ N., long. 96°41′09″ W.)
CESNA, WI	WP	(Lat. 45°52′14″ N., long. 92°10′59″ W.)
EEGEE, WI	WP	(Lat. 45°08′53″ N., long. 88°45′58″ W.)

Q–142 METOW, WA to KIXCO, MT [New]

METOW, WA	WP	(Lat. 48°08′00″ N., long. 120°09′00″ W.)
Mullan Pass, ID (MLP)	VOR/DME	(Lat. 47°27′25″ N., long. 115°38′46″ W.)
KEETA, MI	WP	(Lat. 47°20′39″ N., long. 112°52′51″ W.)
OKVUJ, MT	WP	(Lat. 47°03′11″ N., long. 109°35′31″ W.)
KIXCO, MT	WP	(Lat. 46°35′56″ N., long. 104°35′27″ W.)

Q–144 ZIRAN, WA to LEWIT, MT [New]

ZIRAN, WA	WP	(Lat. 47°32′20″ N., long. 120°25′05″ W.)
ZOOMR, WA	INT	(Lat. 47°25′32″ N., long. 118°18′34″ W.)
BLOWS, MT	WP	(Lat. 47°16′10″ N., long. 115°00′00″ W.)
KEETA, MT	WP	(Lat. 47°20′39″ N., long. 112°52′51″ W.)
LEWIT, MT	WP	(Lat. 47°23′00″ N., long. 110°08′45″ W.)

Q–146 CASHS, WA to HUFFR, MN [New]

CASHS, WA	INT	(Lat. 47°24′21″ N., long. 120°27′30″ W.)
BLUNT, WA	INT	(Lat. 47°03′57″ N., long. 117°39′41″ W.)
DIPHU, MT	INT	(Lat. 46°56′34″ N., long. 114°41′22″ W.)
CUSDA, MT	INT	(Lat. 46°56′14″ N., long. 112°01′02″ W.)
ZERZO, MT	WP	(Lat. 46°52′26″ N., long. 110°05′08″ W.)
KIXCO, MT	WP	(Lat. 46°35′56″ N., long. 104°35′27″ W.)
TIMMR, ND	INT	(Lat. 46°22′50″ N., long. 100°54′33″ W.)
SMERF, SD	WP	(Lat. 45°55′16″ N., long. 97°34′08″ W.)
HUFFR, MN	WP	(Lat. 45°08′49″ N., long. 93°29′30″ W.)

Q–148 STEVS, WA to Bartlesville, OK (BVO) [New]

STEVS, WA	WP	(Lat. 47°14′54″ N., long. 120°32′10″ W.)
ZAXUL, WA	INT	(Lat. 47°10′03″ N., long. 120°02′42″ W.)
FINUT, WA	WP	(Lat. 46°44′56″ N., long. 117°05′20″ W.)
WEDAK, MT	INT	(Lat. 45°53′18″ N., long. 114°05′02″ W.)
WAIDE, MT	INT	(Lat. 44°50′49″ N., long. 111°44′47″ W.)
JUGIV, WY	INT	(Lat. 42°57′44″ N., long. 108°08′43″ W.)
Medicine Bow, WY (MBW)	VOR/DME	(Lat. 41°50′44″ N., long. 106°00′15″ W.)
MOCTU, WY	INT	(Lat. 41°11′54″ N., long. 104°33′10″ W.)
LEWOY, CO	WP	(Lat. 40°31′51″ N., long. 103°13′48″ W.)
CUGGA, KS	INT	(Lat. 39°19′04″ N., long. 100°52′07″ W.)
PENUT, KS	WP	(Lat. 38°37′00″ N., long. 99°38′25″ W.)
KIRKE, KS	INT	(Lat. 38°05′23″ N., long. 98°24′05″ W.)
MORRR, KS	WP	(Lat. 37°31′11″ N., long. 97°15′21″ W.)
Bartlesville, OK (BVO)	VOR/DME	(Lat. 36°50′03″ N., long. 96°01′06″ W.)

Q–150 STEVS, WA to OPPEE, ND [New]

STEVS, WA	WP	(Lat. 47°14′54″ N., long. 120°32′10″ W.)
ZAXUL, WA	INT	(Lat. 47°10′03″ N., long. 120°02′42″ W.)
LEZLE, WA	INT	(Lat. 46°08′36″ N., long. 117°09′24″ W.)
BAXGO, ID	INT	(Lat. 45°02′57″ N., long. 114°01′33″ W.)
LAMON, ID	INT	(Lat. 43°57′34″ N., long. 111°14′58″ W.)
GANNE, WY	WP	(Lat. 43°18′37″ N., long. 109°30′24″ W.)
OPPEE, WY	WP	(Lat. 41°27′33″ N., long. 106°14′42″ W.)

Q–152 SUNED, WA to O'Neill, NE [New]

SUNED, WA	INT	(Lat. 46°17′42″ N., long. 119°57′36″ W.)
LEZLE, WA	INT	(Lat. 46°08′36″ N., long. 117°09′24″ W.)
WEDAK, MT	INT	(Lat. 45°53′18″ N., long. 114°05′02″ W.)
IKFOM, WY	WP	(Lat. 44°54′59″ N., long. 108°32′21″ W.)
WUVUT, WY	INT	(Lat. 44°14′40″ N., long. 105°15′53″ W.)
O'Neill, NE (ONL)	VORTAC	(Lat. 42°28′14″ N., long. 98°41′13″ W.)

Q–154 WANTA, WA to Bowie, TX [New]

WANTA, WA	INT	(Lat. 46°28′24″ N., long. 121°37′26″ W.)
JELTI, OR	INT	(Lat. 44°59′37″ N., long. 118°21′12″ W.)
HOVEL, ID	INT	(Lat. 44°21′33″ N., long. 117°11′31″ W.)
VELUY, ID	WP	(Lat. 43°38′24″ N., long. 115°44′53″ W.)
Burley, ID (BYI)	VOR/DME	(Lat. 42°34′49″ N., long. 113°51′57″ W.)
PIMIE, UT	INT	(Lat. 41°49′19″ N., long. 112°18′47″ W.)
NAGNE, UT	INT	(Lat. 41°10′19″ N., long. 111°15′10″ W.)
BONGO, UT	INT	(Lat. 40°07′31″ N., long. 109°21′23″ W.)
PITMN, CO	INT	(Lat. 39°06′03″ N., long. 107°18′31″ W.)
TAYLR, CO	INT	(Lat. 38°47′36″ N., long. 106°44′03″ W.)
GOSIP, CO	INT	(Lat. 37°37′15″ N., long. 104°35′50″ W.)
KENTO, NM	INT	(Lat. 36°44′55″ N., long. 103°04′48″ W.)
NOSEW, TX	WP	(Lat. 35°31′08″ N., long. 100°59′38″ W.)
Bowie, TX (UKW)	VORTAC	(Lat. 33°32′09″ N., long. 97°49′17″ W.)

Q–156 STEVS, WA to ZZIPR, IA [New]

STEVS, WA	WP	(Lat. 47°14′54″ N., long. 120°32′10″ W.)
ZAXUL, WA	INT	(Lat. 47°10′03″ N., long. 120°02′42″ W.)
FINUT, WA	WP	(Lat. 46°44′56″ N., long. 117°05′20″ W.)
TUFFY, MT	INT	(Lat. 46°42′29″ N., long. 114°05′01″ W.)
UPUGE, MT	INT	(Lat. 46°38′05″ N., long. 112°10′02″ W.)
HEXOL, MT	INT	(Lat. 46°36′49″ N., long. 111°09′21″ W.)
TOUGH, MT	WP	(Lat. 46°13′58″ N., long. 105°12′52″ W.)
JELRO, SD	INT	(Lat. 45°48′44″ N., long. 102°51′47″ W.)
KEKPE, SD	WP	(Lat. 45°17′55″ N., long. 100°16′49″ W.)
UFFDA, MN	WP	(Lat. 44°29′46″ N., long. 96°05′25″ W.)
HSTIN, MN	WP	(Lat. 44°00′08″ N., long. 93°57′40″ W.)
ZZIPR, IA	WP	(Lat. 43°11′09″ N., long. 91°39′33″ W.)

Issued in Washington, DC, on December 14, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–32563 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0654; Airspace Docket No. 11–AWP–8]

RIN 2120–AA66

Proposed Modification of VOR Federal Airways V–135 and V–137; Southwest United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify very high frequency omnidirectional range (VOR) Federal airways V–135 and V–137 by extending the airways to the Mexicali, Mexico VOR/DME. This action would enhance navigation and air traffic control coordination for aircraft proceeding across the United States-Mexican border.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–0654 and Airspace Docket No. 11–AWP–8 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0654 and Airspace Docket No. 11–AWP–8) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0654 and Airspace Docket No. 11–AWP–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to extend two existing VOR Federal airways to the Mexicali, Mexico VOR/DME. V–135 would be amended by adding a segment between the Mexicali VOR/DME and the Bard, AZ VORTAC. V–137 would be amended by adding a segment between the Mexicali VOR/DME and the Imperial, CA VORTAC. These amendments would benefit cross-border navigation. Additionally, fixes would be established at the border crossing points to simplify air traffic control coordination of flights.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9V signed August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as

required to preserve the safe and efficient flow of air traffic.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010 VOR Federal airways.

* * * * *

V–135 [Amended]

From Mexicali, Mexico; VIA Bard, AZ; Blythe, CA; Parker, CA; Needles, CA; Goffs, CA; Beatty, NV; INT Beatty 326°(T)/310°(M) and Tonopah, NV, 223°(T)/206°(M) radials; to Tonopah. The airspace within R–4807 and the airspace within Mexico is excluded.

V–137 [Amended]

From Mexicali, Mexico; via Imperial, CA; INT Imperial 350°(T)/336°(M) and Thermal, CA 144°(T)/131°(M) radials; Palm Springs, CA; Palmdale, CA; Gorman, CA; Avenal, CA; Priest, CA; Salinas, CA. The airspace within Mexico is excluded.

Issued in Washington, DC, on December 14, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Rules Group.

[FR Doc. 2011–32558 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–9284, 34–65960, 39–2482, IA–3336, IC–29886; File No. S7–43–11]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Comments should be submitted by January 20, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form(*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–43–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File No. S7–43–11. This file number should be included on the subject line if email is used. To help us 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/other.shtml*). Comments also are available for Web site viewing and printing 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, (202) 551–5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA''), codified at 5 U.S.C. 600–611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment and, therefore, the list below is broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list. The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.

The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 2000. When the Commission implemented the Act in 1980, it stated that it ''intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.'' Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

List of Rules To Be Reviewed

Title: Rule 17f–7.

Citation: 17 CFR 270.17f–7.

Authority: 15 U.S.C. 80a–6(c), 80a–7(d), 80a–17(f), 80a–37(a).

Description: Rule 17f–7 under the Investment Company Act of 1940 sets certain requirements for maintaining the assets of a registered management investment company with a foreign securities depository, including the requirement that the fund's contract with its global custodian must obligate the custodian to analyze and monitor the custody risks of using the depository and provide information about the risks to the fund or its adviser. If a custody arrangement with a securities depository no longer meets the requirements of the rule, the assets must be withdrawn from the depository as soon as reasonably practicable.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC–24424, which the Commission issued on April 27, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Revised Transfer Agent Form and Related Rule.

Citation: 17 CFR 240.17Ac2–2, 17 CFR 249b.102, 17 CFR 240.17a–24.

Authority: 15 U.S.C. 78a *et seq.*

Description: These rules amended Rule 17Ac2–2 and Form TA–2 under the Securities Exchange Act of 1934 (''Exchange Act'') and rescinded Rule 17a–24 under the Exchange Act to obtain more comprehensive information from transfer agents about their activities while making Form TA–2 clearer and easier for transfer agents to complete.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–42892, which was approved by the Commission on June 2, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. One commenter, however, indicated that the proposed amendments would not require significant modifications to existing procedures or systems. The Commission stated that the rule amendments, as adopted, would not have an additional significant economic impact on a substantial number of small entities.

* * * * *

Title: Rule 237.

Citation: 17 CFR 230.237.

Authority: 15 U.S.C. 77s(a), 77z–3.

Description: Rule 237 under the Securities Act of 1933 (''Act'') exempts from registration under the Act certain securities offered to individuals who reside in or are present in the United States, and who contribute to or receive the income and assets from a Canadian retirement account or sold to such accounts. Among other conditions, rule 237 requires written offering materials for these securities to disclose that the securities are not registered with the Commission and that the securities may not be offered or sold in the United States unless registered or exempt from registration.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC–24491, which was issued by the Commission on June 7, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Rule 7d–2.

Citation: 17 CFR 270.7d–2.

Authority: 15 U.S.C. 80a–37(a).

Description: Rule 7d–2 under the Investment Company Act of 1940 excludes from the definition of ''public offering'' under the Act offerings of certain securities to natural persons who reside in or are present in the United States, and who contribute to or receive the income and assets from a Canadian retirement account or sales of certain securities to such accounts. Among other conditions, rule 7d–2 requires written offering materials for these securities to disclose that (i) the securities are not registered with the Commission and that the securities may not be offered or sold in the United States unless registered or exempt from registration and (ii) the investment company that issued the securities is not registered with the Commission.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC–24491, which was issued by the Commission on June 7, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Privacy of Consumer Financial Information (Regulation S–P).

Citation: 17 CFR Part 248.

Authority: 15 U.S.C. 6801 *et seq.,* 15 U.S.C. 78a *et seq.,* 15 U.S.C. 80a–1 *et seq.,* 15 U.S.C. 80b–1 *et seq.*

Description: Regulation S–P consists of rules that implemented, with respect to investment advisers registered with the Commission, brokers, dealers, and investment companies, provisions in Title V of the Gramm-Leach-Bliley Act requiring the provision of consumer financial privacy notices, restricting disclosures of nonpublic personal information, and mandating that the Commission establish standards to protect customer information.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 as summarized in Release No. 34–42974, which was approved by the Commission on June 22, 2000. No comment in response to the initial regulatory flexibility analysis was received, although commenters who addressed the proposed rules suggested that the Commission reduce compliance burdens by, among other things, providing model forms, providing additional examples, adding additional flexibility for providing initial privacy notices, and extending the rules' effective date. In response, the Commission provided an Appendix with sample clauses that could be used in privacy notices under appropriate circumstances, an extended compliance date to allow more time to comply and more opportunity to include initial notices with other mailings, an additional example permitting the householding of annual privacy notices with prospectuses or investor reports delivered under the Commission's householding rules, and revisions permitting the delivery of an initial notice within a reasonable time after establishing a customer relationship in two additional circumstances.

* * * * *

Title: Selective Disclosure and Insider Trading.

Citation: 17 CFR 243.100–103, 17 CFR 240.10b5–1 and 10b5–2.

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

Description: These rules address the selective disclosure by issuers of material nonpublic information; when insider trading liability arises in connection with a trader's ''use'' or ''knowing possession'' of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of

insider trading. The rules are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7881, approved by the Commission on August 15, 2000, which adopted Regulation FD and the related rules and revisions. Comments to the proposing release were considered at that time.

* * * * *

Title: Financial Statements and Periodic Reports for Related Issuers and Guarantors.

Citation: 17 CFR 210.3–10, 17 CFR 210.3–16, 17 CFR 240.12h–5, 17 CFR 249.220f.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.,* 15 U.S.C. 80a–1 *et seq.*

Description: These rules provide financial reporting rules for related issuers and guarantors of guaranteed securities and provide an exemption from Exchange Act periodic reporting for subsidiary issuers and subsidiary guarantors of these securities.

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to the Regulatory Flexibility Act (15 U.S.C. 605(b)), the Chairman of the Commission certified at the proposal stage on February 26, 1999 in Release No. 33–7649 that the revisions to rules and forms would not have a significant economic impact on a substantial number of small entities. The Commission received no comments specifically addressing the certification.

* * * * *

Title: Unlisted Trading Privileges.

Citation: 17 CFR 240.12f–2(a).

Authority: 15 U.S.C. 78a *et seq.*

Description: This rule amended Rule 12f–2(a) under the Exchange Act to provide that a national securities exchange extending unlisted trading privileges to an initial public offering security listed on another exchange would no longer be required to wait until the day after trading had commenced on the listing exchange to allow trading in that security, but instead would be permitted to begin trading an initial public offering issue immediately after the listing exchange's reporting of the first trade in the security to the Consolidated Tape.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–43217, which was approved by the Commission on August 29, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. Commenters did, however, offer support for the proposal on the basis that a one-day trading delay imposed a burden on competition. Based in part on comments, the Commission decided to adopt the rule amendment as proposed.

* * * * *

Title: Amendments to Rule 9b–1 Under the Securities Exchange Act of 1934 Relating to the Options Disclosure Document.

Citation: 17 CFR 240.9b–1.

Authority: 15 U.S.C. 78a *et seq.*

Description: The Commission adopted minor or technical amendments to Rule 9b–1 under the Exchange Act to revise certain language in the rule to better reflect the disclosure requirements regarding standardized options.

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified at the proposal stage, on June 25, 1998, that the proposed amendments to Rule 9b–1 under the Exchange Act would not have a significant economic impact on a substantial number of small entities. The Commission received no comment specifically addressing the certification, and the Commission adopted the rule amendments substantially as proposed on October 19, 2000.

* * * * *

Title: Form ADV–NR.

Citation: 17 CFR 279.4.

Authority: 15 U.S.C. 77s(a), 15 U.S.C. 78w(a), 15 U.S.C. 77sss(a), 15 U.S.C. 78a–37(a), and 15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a).

Description: Form ADV–NR is a form for the appointment of an agent for service of process by a non-resident general partner and non-resident managing agent of an investment adviser. Each non-resident general partner or managing agent of an investment adviser must file this form pursuant to rule 0–2 [17 CFR 275.0–2] under the Investment Advisers Act of 1940.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA–1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Form ADV–H.

Citation: 17 CFR 279.3.

Authority: 15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a).

Description: An investment adviser must file Form ADV–H pursuant to rule 203–3 [17 CFR 275.203–3] under the Investment Advisers Act of 1940 to request a temporary hardship exemption or apply for a continuing hardship exemption from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA–1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Delivery of Proxy Statements and Information Statements to Households.

Citation: 17 CFR 230.154, 17 CFR 240.14a–2 and 14a–3, 17 CFR 240.14a–7, 17 CFR 240.14a–101, 17 CFR 240.14b–1 and 14b–2, 17 CFR 240.14c–3, 17 CFR 240.14c–101.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.,* 15 U.S.C. 80a–1 *et seq.*

Description: These amendments permit companies and intermediaries to satisfy the delivery requirements for proxy statements and information statements with respect to two or more security holders sharing the same address by delivering a single proxy statement or information statement to those security holders. These amendments also modify the rules for householding annual reports and permit householding of proxy statements combined with prospectuses.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7912, approved by the Commission on October 27, 2000, which adopted the amendments. Comments to the proposing release were considered at that time. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

* * * * *

Title: Rule 203–3.

Citation: 17 CFR 275.203–3.

Authority: 15 U.S.C. 80b–3(c)(1) and 80b–11(a)].

Description: Rule 203–3 under the Investment Advisers Act of 1940 Advisers Act provides a temporary hardship exemption and a ''continuing hardship exemption'' from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA–1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Disclosure of Order Routing Practices.

Citation: 17 CFR 240.11Ac1–5 and 240.11Ac1–6, *renumbered* 17 CFR 242.605 and 242.606.

Authority: 15 U.S.C. 78a *et seq.*

Description: The Commission adopted Rule 11Ac1–5 under the Exchange Act to require market centers that trade national market system securities to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. It adopted Rule 11Ac1–6 under the Exchange Act to require broker-dealers that route customer orders in equity and option securities to make publicly available quarterly reports that, among other things, identify the venues to which customer orders are routed for execution, and, in addition, to disclose to customers, on request, the venues to which their individual orders were routed.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–43590, which was approved by the Commission on November 17, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. Some commenters stated, however, that they believed compliance with the proposed rules, particularly Rule 11Ac1–5, could be significantly more burdensome for smaller firms than for large ones. The Commission did not agree that compliance with the rules would be unduly burdensome for firms considered small entities for purposes of the Regulatory Flexibility Act, particularly after the omission from the final rules of a proposed requirement of a narrative discussion and analysis of order routing objectives and results.

* * * * *

Title: Firm Quote and Trade-Through Disclosure Rules for Options.

Citation: 17 CFR 240.11Ac1–1, *renumbered* 17 CFR 242.602, and 11Ac1–7, *11Ac1–7 repealed December 27, 2002.*

Authority: 15 U.S.C. 78a *et seq.*

Description: The Commission amended Rule 11Ac1–1 under the Exchange Act to require options exchanges and options market makers to publish firm quotes and adopted Rule 11Ac1–7 under the Exchange Act to require a broker-dealer to disclose to its customer when its customer's order for listed options is executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–43591, which was approved by the Commission on November 17, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis.

* * * * *

Title: Revision of the Commission's Auditor Independence Requirements.

Citation: 17 CFR 210.2–01, 17 CFR 240.14a–101.

Authority: 15 U.S.C. 77c *et seq.,* 15 U.S.C. 78c *et seq.,* 15 U.S.C. 79e *et seq.,* 15 U.S.C. 80a *et seq.*

Description: The Commission amended Rule 2–01 in Regulation S–X and Item 9 in Schedule 14A under the Securities Exchange Act to modernize its guidance for determining whether an auditor is independent in light of investments by auditors (or the auditor's family members) in audit clients, employment relationships between auditors (or the auditor's family members) and audit clients, and the scope of services provided by audit firms to their audit clients.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7919, which was approved by the Commission on November 21, 2000. In response to multiple public comments, the Commission made modifications to reduce the impact of the new rules on small entities. In light of those modifications, the Commission concluded that the rules as adopted would not have a significant impact on a substantial number of small entities.

* * * * *

Title: Options Price Reporting Authority.

Citation: 17 CFR 240.11Aa3–2, *renumbered* 17 CFR 242.608.

Authority: 15 U.S.C. 78a *et seq.*

Description: The Commission adopted amendments to the Options Price Reporting Authority (''OPRA'') Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder, to allocate, among the options exchanges, OPRA's peak period message handling capacity.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–43621, which was approved by the Commission on November 27, 2000. The Commission received one comment directly relating to the initial regulatory flexibility analysis. The comment, from an OPRA participant exchange, stated that all its members would be affected if quotation capabilities were reduced and, as a result, small businesses would be impacted by the proposed OPRA Plan amendments because many of this commenter's members were small entities. Although the Commission included certain recommendations from commenters in the final OPRA Plan amendments, it did not believe that entities other than the OPRA participant exchanges, none of which was a small entity for purposes of the Regulatory Flexibility Act, would be directly affected by the amendments, or that the OPRA Plan amendments, as adopted, established any new reporting, recordkeeping, or compliance requirements for small entities.

Dated: December 15, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–32537 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, and 58

[Docket No. FR–5423–P–01]

RIN 2501–AD51

Floodplain Management and Protection of Wetlands

Correction

In proposed rule document 2011–31629 appearing on pages 77162–77175 in the issue of December 12, 2011, make the following correction:

§ 55.11 [Corrected]

The table on page 77171 is corrected to read as set forth below:

TABLE 1

Type of proposed action (new reviewable action or an amendment) [1]	Type of proposed action			
	Floodways	Coastal high hazard areas	Wetlands or 100-year floodplain outside coastal high hazard area and floodways	Non-wetlands area outside of the 100-year and within the 500-year floodplain
Critical Actions as defined in § 55.12(b)(2). Non-critical actions not excluded under § 55.12(b) or (c).	Critical actions not allowed. Allowed only if the proposed non-critical action is a functionally dependent use and processed under § 55.20.[2]	Critical actions not allowed. Allowed only if the proposed non-critical action: (A)(1) Is either (a) reconstruction of a structure destroyed by a disaster, or (b) an improvement of an existing structure; (2) is designed for a Coastal High Hazard Area under § 55.1(c)(3); and (3) is processed under § 55.20; [2] or (B) Is a functionally dependent use processed under § 55.20.	Allowed if the proposed critical action is processed under § 55.20.[2] Allowed if proposed non-critical action is processed under § 55.20.[2]	Allowed if the proposed critical action is processed under § 55.20.[2] Any non-critical action is allowed without processing under this part.

[1] Under E.O. 11990, the decision making process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.
[2] Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

[FR Doc. C1–2011–31629 Filed 12–20–11; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0972]

RIN 1625–AA09

Drawbridge Operation Regulations; Bayou Liberty, Mile 2.0, St. Tammany Parish, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning the regulation governing the operation of the SR 433 Bridge over Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA. The Louisiana Department of Transportation and Development (the bridge owner) proposed a change in the operating schedule to reduce the hours of manned operation of the bridge to make more efficient use of personnel and operating resources. Based on public comments expressing concern with the impact the proposed changes would have on public access to the waterway, the bridge owner no longer desires to move forward with the proposed rule.

DATES: The notice of proposed rulemaking is withdrawn on December 21, 2011.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0972 in the ''Keyword'' box and then clicking ''Search''.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Jim Wetherington, Bridge Administration Branch, Eighth Coast Guard District; telephone (504) 671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2010, we published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA.'' in the **Federal Register** (75 FR 71061). The NPRM concerned the change to the operating schedule for the State Route 433 (SR 433) pontoon span bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. The NPRM provided for an opening upon two-hour notice, allowing the Louisiana Department of Transportation and Development, owner of the bridge, to reduce the hours of manned operation of the bridge in order to make more efficient use of personnel and operating resources. This notice met with public concern over access and property values. On July 20, 2011, we published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled ''Drawbridge Operation Regulations; Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA.'' in the **Federal Register** (76 FR 43226). The SNPRM concerned the change to the operating schedule for the State Route 433 (SR 433) pontoon span bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. The SNPRM provided for an opening upon one-hour notice from 7 a.m. to 7 p.m., allowing the Louisiana Department of Transportation and Development, owner of the bridge, to reduce the hours of manned operation of the bridge in order to make more efficient use of personnel and operating resources.

Withdrawal

Due to the negative feedback from the waterway users and the general public as well as the financial pressure mitigating these concerns would cause, the bridge owner has decided to maintain the current operating schedule. Therefore, we withdraw our proposed change to the existing notification requirements within this regulation.

Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: November 21, 2011.

Roy A. Nash,

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

[FR Doc. 2011–32631 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0253; FRL–9329–8]

Propylene Oxide; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish the tree nut crop group tolerance and separate tolerances on pistachio and pine nuts for both the fumigant propylene oxide and the reaction product from the use of propylene oxide, known as propylene chlorohydrin, to cover all registered uses on raw and processed nuts. Also, in accordance with current Agency practice, EPA is proposing minor revisions to tolerance expressions and specific tolerance nomenclatures for propylene oxide and propylene chlorohydrin.

DATES: Comments must be received on or before February 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0253, 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 Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0253. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov* or email. The 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 email comment directly to EPA without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@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 Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

In this action, EPA is proposing to amend the propylene oxide tolerance regulation at 40 CFR 180.491 to add the crop group for tree nuts (nut, tree, group 14). In the Reregistration Eligibility Decision (RED) for propylene oxide, the Agency recommended that a tree nut crop group tolerance be established for two separate reasons:

1. As a technical correction to conform the existing tolerance on ''nutmeat, processed, except peanuts'' with current Agency commodity terms; and

2. To address the lack of a tolerance for registered uses on raw nuts. U.S. EPA, RED for Propylene Oxide (August 2006). In the **Federal Register** of September 24, 2008 (73 FR 54954) (FRL–8382–2), EPA addressed the commodity conformity issue by replacing the ''nutmeat, processed, except peanuts'' with a tree nut crop group. However, a propylene oxide registrant objected to this action pointing out that this was not merely a technical correction to commodity terms but actually a substantive change to the tolerance because the tree nut crop group did not cover all nuts falling within the generic term ''nutmeat, processed.'' Accordingly, EPA, on its initiative, corrected its error and replaced the tree nut crop group with the pre-existing tolerance for ''nutmeat, processed, except peanuts'' in the **Federal Register** of June 29, 2011 (76 FR 38036) (FRL–8877–7). Unfortunately, at the time of that action, EPA failed to recognize that the RED had found that a tree nut crop group was needed both as a technical, conforming change and to cover registered uses on raw nuts. Today, EPA is addressing the second reason by once again proposing to establish a tree nut group tolerance for propylene oxide in 40 CFR 180.491(a)(1) for residues of propylene oxide in or on nut, tree, group 14 at 300 ppm and in 40 CFR 180.491(a)(2) for residues of propylene chlorohydrin in or on nut, tree, group 14 at 10.0 ppm. However, because the current tree nut group tolerance does not cover all registered uses on nuts, EPA is also proposing to establish individual tolerances on these use sites (pistachios, pine nuts) in 40 CFR 180.491(a)(1) for residues of propylene oxide in or on pistachio at 300 ppm and nut, pine at 300 ppm, and in 40 CFR 180.491(a)(2) for residues of propylene chlorohydrin in or on pistachio at 10.0 ppm and nut, pine at 10.0 ppm. Establishment of tolerances for pistachios, pine nuts, and the nut, tree, group 14, would complete the actions recommended by the Agency in the RED.

In order to conform to current Agency practice, EPA is proposing to revise the commodity terminology in 40 CFR 180.491(a)(1) from ''herbs and spices, group 19, dried'' to ''herbs and spices, group 19, dried leaves'' and in 40 CFR 180.491(a)(2) from ''herbs and spices, group 19, dried, except basil'' to ''herbs and spices, group 19, dried leaves, except basil.''

Also, in accordance with current Agency practice to describe more clearly the measurement and scope or coverage of tolerances, including applicable metabolites and degradates, EPA is proposing minor revisions to tolerance expressions for propylene oxide and propylene chlorohydrins. The revisions will not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerance.

The Agency is proposing to revise the introductory text containing the tolerance expressions in 40 CFR 180.491(a)(1) and (a)(2).

EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each RED for the active ingredient. REDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: (800) 490–9198; fax number: (513) 489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: (800) 553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov.* An electronic copy of the propylene oxide RED and its addendums are available on the Internet in the docket for this proposed rule, ID

number EPA–HQ–OPP–2005–0253, at *http://www.regulations.gov* and at *http://www.epa.gov/pesticides/reregistration/status.htm.*

Copies of the Residue Chemistry Chapter and other documents (such as the dietary exposure analysis of October 2011 for use of propylene oxide on pine nuts and comprehensive dietary exposure analysis of June 2006) which support the propylene oxide RED are found in the Administrative Record. An electronic copy of the Residue Chemistry Chapter and addendum as well as other support documents for propylene oxide are available through EPA's electronic docket and comment system, regulations.gov at *http://www.regulations.gov.* You may search for docket ID number EPA–HQ–OPP–2005–0253, then click on that docket ID number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED which lists the submitted studies that the Agency found acceptable.

B. What is the agency's authority for taking this action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

The Agency's evaluation of the database for pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, are contained in REDs, as are the Agency's conditions under which these uses and products will be eligible for reregistration. In REDs, the Agency recommends the establishment, modification, and/or revocation of specific tolerances. The Agency's tolerance recommendations, such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs do not need such assessment when the tolerances are no longer necessary.

C. When do these actions become effective?

EPA is proposing that the establishment of tolerances, and revision of tolerance expressions and nomenclatures become effective on the date of publication of the final rule in the **Federal Register**. If you have comments, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for propylene oxide or propylene chlorohydrin.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted this type of action (*e.g.,* establishment of a tolerance) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, or expansion of exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small

entities. This analysis for tolerance establishments and modifications was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide involved in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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 14, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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 180.491 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fumigant propylene oxide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only propylene oxide, when used as a postharvest fumigant, in or on the commodity.

Commodity	Parts per million
Cacao bean, dried bean	200
Cacao bean, cocoa powder	200
Fig	3.0
Garlic, dried	300
Grape, raisin	1.0
Herbs and spices, group 19, dried leaves	300
Nut, pine	300
Nut, tree, group 14	300
Nutmeat, processed, except peanuts	300
Onion, dried	300
Pistachio	300
Plum, prune, dried	2.0

(2) Tolerances are established for residues of the reaction product, propylene chlorohydrin, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of propylene chlorohydrin (1-chloro-2-propanol), and its isomer 2-chloro-1-propanol, calculated as the stoichiometric equivalent of propylene chlorohydrin (1-chloro-2-propanol), that results from the use of propylene oxide as a postharvest fumigant, in or on the commodity.

Commodity	Parts per million
Basil, dried leaves	6000
Cacao bean, dried bean	20.0
Cacao bean, cocoa powder	20.0
Fig	3.0
Garlic, dried	6000
Grape, raisin	4.0
Herbs and spices, group 19, dried leaves, except basil	1500
Nut, pine	10.0
Nut, tree, group 14	10.0
Nutmeat, processed, except peanuts	10.0
Onion, dried	6000
Pistachio	10.0
Plum, prune, dried	2.0

* * * * *

[FR Doc. 2011–32655 Filed 12–20–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 245
Wednesday, December 21, 2011

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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0044]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB), gives notice of the establishment of this updated Privacy Act System of Records.[1]

DATES: Comments must be received no later than January 20, 2012. The new database will be effective January 30, 2012 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0044, by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements Federal consumer financial laws, and, among other powers, has authority to protect consumers from unfair, deceptive, and abusive practices when obtaining consumer financial products or services. The new system of records described in this notice, CFPB.011—Correspondence Tracking Database, will track and process controlled correspondence. The Correspondence Tracking Database will allow the CFPB to keep track of official correspondence while it is being actively handled.

The report of the new system of records has been submitted to the Committee on Oversight and 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, and the Privacy Act, 5 U.S.C. 552a(r).

The CFPB implementation team under Treasury previously published a system of records notice (''SORN'') for the Correspondence Database Treasury/DO .318 in the **Federal Register**, 76 FR 14834, June 14, 2011.

The system of records entitled, ''CFPB.011—Correspondence Tracking Database'' replaces the previously published SORN and is published in its entirety below.

Dated: December 15, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.011

SYSTEM NAME:

CFPB Correspondence Tracking Database.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those whose correspondence is submitted to the CFPB and members of the CFPB assigned to help process, review and/or respond to the correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the database may contain (1) Correspondence (including, without limitation, official letters, memoranda, faxes, telegrams, and emails) received and sent; (2) mailing lists of correspondence submitters; (3) identifying information regarding both the individual who is submitting the correspondence or the individual or entity on whose behalf such correspondence is submitted, such as the individual's name, phone number, address, email address, and any other disclosed identifiable information; (4) information concerning the CFPB employees responsible for processing the correspondence; (5) correspondence disposition information; (6) correspondence tracking dates; and (7) internal office assignment information. Supporting records may include correspondence between the CFPB and the individual. Records related to consumer complaints will not be contained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Sections 1011, 1012, 1013, codified at 12 U.S.C. 5491, 5492, 5493.[2]

PURPOSE:

The purpose of the Correspondence Tracking Database is to enable the CFPB to track correspondence, including responsibilities for processing, tracking, responding to, or referring sensitive and/or time-critical correspondence for appropriate processing and responsive action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Confidentiality Rules, promulgated at 12 CFR part 1070 *et seq* to:

(1) Appropriate agencies, entities, and persons when: (a) the CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes this Notice on behalf of the CFPB.

[2] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR Chapter X. This SORN is published pursuant to those rules and the Privacy Act.

compromised; (b) the CFPB 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 CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another Federal or state agency to: (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the Treasury or any of its components;

(7) A grand jury pursuant either to a Federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons, to the extent necessary to respond to or refer correspondence;

(10) Appropriate Federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders. Paper copies of individual records are made by the authorized CFPB staff.

RETRIEVABILITY:

Records are retrievable by the name of the individual covered by the system, date of correspondence, or correspondence control number or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Computer and paper records will be maintained indefinitely until a records disposition schedule is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Executive Secretary 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this database, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures,'' above.

RECORD SOURCE CATEGORIES:

Information in this system is maintained about individuals who submit correspondence to CFPB and employees assigned to help process, review, or respond to correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–32718 Filed 12–20–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Resource Committee Meeting will meet in Washington, DC on January 20, 2012. The purpose of the meeting is to orient the committee members to the federal advisory committees and to discuss projects for the committee to discuss throughout the 2012 year. The meeting is partially closed to the public.

The Forest Resource Committee is authorized under the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). The purpose of the committee is to provide direction and coordination of actions within the U.S. Department of Agriculture, and coordination with State agencies and the private sector, to effectively address the national priorities for non-industrial private forest land.

DATES: The meeting will be held on January 20, 2012.

ADDRESSES: The meeting will be held at 201 14th Street SW., Washington, DC in the Sidney Yates Building Training Room. Written comments should be sent to 1400 Independence Ave. SW.,

mailstop 1123, Washington DC 20250. Comments may also be sent via email to *mayasolomon@fs.fed.us,* or via facsimile to (202) 205–1271.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on the Forest Resource Coordinating Committee Web site at *http://www.fs.fed.us/spf/coop/.* Visitors are encouraged to call ahead to (202) 205–1043 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, Forest Resource Coordinating Committee Program Coordinator, Cooperative Forestry staff, (202) 205–1376 or Ted Beauvais, Assistant Director, Cooperative Forestry staff, (202) 205–1190.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public from 12 p.m. to 4:30 p.m.. The committee will discuss its 2012 plan of work, which is open to the public. A full agenda for this meeting may be found on the Forest Resource Coordinating Committee Web site (*http://www.fs.fed.us/spf/coop/*). Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff or after the meeting. A summary of the metting will be posted at *http://www.fs.fed.us/spf/coop/within* 21 days of the meeting.

Dated: December 15, 2011.

James Hubbard,

Deputy Chief, State & Private Forestry.

[FR Doc. 2011–32608 Filed 12–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Satellite Ground Station Customer Questionnaire.

OMB Control Number: 0648–0227.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 100.

Average Hours Per Response: 10 minutes.

Burden Hours: 17.

Needs and Uses: This request is for an extension of a currently approved collection.

NOAA asks people who operate ground receiving stations that receive data from NOAA satellites to complete a questionnaire about the types of data received, its use, the equipment involved, and similar subjects. The data obtained are used by NOAA for short-term operations and long-term planning. Collection of this data assists us in complying with the terms of our Memorandum of Understanding (MOU) with the World Meteorological Organization: United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) on area of common interest (2008).

Affected Public: Not-for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: December 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–32621 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuary Permits.

OMB Control Number: 0648–0141.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 634.

Average Hours per Response: General permit applications and reports, 1 hour, 30 minutes each; baitfish and lionfish permit applications and logs, 15 minutes each; special use permits and reports, 8 hours each; historical resource permits and reports, 13 hours each; Tortugas access requests and reports, 5 minutes each; permit amendments, 30 minutes; activity certification, 30 minutes; registering voluntary activities, 15 minutes; appeals, 24 hours.

Burden Hours: 1,703.

Needs and Uses: This request is for extension of a current information collection. National Marine Sanctuary regulations at 15 CFR part 922 list specific activities that are prohibited in national marine sanctuaries. These regulations also state that otherwise prohibited activities are permissible if a permit is issued by the Office of National Marine Sanctuaries (ONMS). Persons desiring a permit must submit an application, and anyone obtaining a permit is generally required to submit one or more reports on the activity allowed under the permit.

The recordkeeping and reporting requirements at 15 CFR part 922 form the basis for this collection of information. This information is required by the National Ocean Service's Office of National Marine Sanctuaries to protect and manage sanctuary resources as required by the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*).

Affected Public: Business or other for-profit organizations; not-for-profit institutions, state, local and tribal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: December 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–32588 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Recreational Charter Vessel Guide and Owner Data Collection.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 643.

Average Hours Per Response: Complete survey, 90 minutes; follow-up/non-response survey, 6 minutes.

Burden Hours: 519.

Needs and Uses: Numerous management measures have recently been proposed or implemented that affect recreational charter boat fishing for Pacific halibut off Alaska. On January 5, 2010, the National Marine Fisheries Service (NMFS) issued a final rule establishing a limited entry permit system for charter vessels in the guided halibut sport fishery in International Pacific Halibut Commission Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) (75FR554). This permit system is intended to address concerns about the growth of fishing capacity in this fishery sector, which accounts for a substantial portion of the overall recreational halibut catch in Alaska. On March 16, 2011, a size limit on Pacific halibut caught while charter boat fishing for the 2011 fishing season was established (76FR14300). In addition, on July 22, 2011, a Halibut Catch Sharing Plan (76FR44156) was proposed that would alter the way Pacific halibut is allocated between the guided sport (*i.e.,* the charter sector) and the commercial halibut fishery.

To assess the effect of regulatory restrictions (currently in place or potential) on charter operator and owner behavior and welfare, it is necessary to obtain a better general understanding of the Alaska recreational charter boat industry. Some information useful for this purpose is already collected from existing sources, such as charter vessel logbooks administered by Alaska Department of Fish and Game (ADF&G). However, information on vessel and crew characteristics, services offered to clients, spatial and temporal aspects of their operations and fishing behavior, and costs and earnings information are generally not available from these existing data sources and thus must be collected directly from the industry through voluntary survey efforts.

In order to address this information gap, NMFS' Alaska Fisheries Science Center proposes to conduct a survey of charter vessel owners to collect annual cost and earnings data that will supplement logbook data collected by ADF&G. The proposed data collection will provide basic economic information about the charter sector, including revenues produced from different products and services provided to clients, fixed and variable operating costs and locations of purchases. These data will support improved analysis and of the effects of fisheries regulations on the charter fishing industry, information that is increasingly needed by the North Pacific Fishery Management Council and NMFS to deal with ongoing halibut resource issues and other fishery management issues involving the charter industry.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: December 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–32599 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BB69

New England Fishery Management Council; Notice of Intent To Prepare an Environmental Impact Statement (EIS); Northeast Multispecies Fishery; Notice of Public Scoping Meetings

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

ACTION: Notice of Intent To Prepare an Environmental Impact Statement; notice of public scoping meetings; requests for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address management and conservation measures for the Northeast (NE) multispecies fishery. This action is necessary to provide analytical support for an amendment to the Northeast Multispecies Fishery Management Plan (FMP) examining potential rules to reduce the likelihood that groundfish permit holders will acquire or control excessive shares of fishing privileges in the fishery and that over-consolidation will occur within the fleet.

This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to fleet diversity and the implementation of accumulation limits for this fishery. This notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation in that process.

DATES: Written comments must be received on or before 5 p.m., EST, on March 1, 2012. Eleven public scoping meetings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** section for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- *Email to the following address: Groundfish.Amendment18@noaa.gov;*
- Mail or hand deliver to Mr. Paul Howard, New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950. Mark the outside of the envelope ''Groundfish Amendment 18 Scoping Comments''; or

• Fax to (978) 465–3116.

The scoping document may also be obtained from the Council office at the previously provided address, by request to the Council by telephone (978) 465–0492, or via the Internet at *http://www.nefmc.org.*

Comments may also be provided orally at any of the 11 public scoping meetings. See the **SUPPLEMENTARY INFORMATION** section for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Howard, New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950, (telephone (978) 465–0492).

SUPPLEMENTARY INFORMATION: The NE multispecies fishery targets cod, haddock, white hake, pollock, Acadian redfish, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, Atlantic halibut, ocean pout, and Atlantic wolffish. These species are managed as 20 individual stocks and are termed ''regulated species''. The Council has managed these species as a unit under the NE Multispecies FMP since 1985. (The NE Multispecies FMP also manages silver hake, red hake and offshore hake, which are called ''small mesh species,'' and which would not be directly affected by Amendment 18.) Many of these stocks are overfished and/or overfishing is occurring. As a result, strict regulations have been adopted to control catch and promote stock rebuilding. Management measures include limited and open-access permit categories, limits on fishing time through days-at-sea (DAS) allocations, gear requirements, closed areas, retention limits, and sector allocation. These measures have been adopted through a series of amendments and adjustments to the original FMP. The most recent amendment (Amendment 16, implemented on May 1, 2010) expands the use of sectors to manage the fishery. Sectors are voluntary, self-selected groups of fishermen that are allocated a portion of the available catch. Amendment 16 also implements annual catch limits (ACLs); exceeding these limits triggers additional management actions called accountability measures (AMs).

At the request of the Council, NMFS published a control date of March 7, 2011. The control date is intended to alert the fishing industry and the public that any present or future accumulation of fishing privileges may be limited or may not be allowed after or prior to the published control date. It also is intended to discourage speculative behavior in the market for fishing privileges while the Council considers whether and how such limitations on accumulation of fishing privileges should be developed. However, in establishing this date, the Council is not obligated to take any further action. No limits or restrictions have been imposed on the groundfish fishery by establishing this control date. However, fishermen are encouraged to preserve any documents relating to their ownership or control of fishing privileges in the event that the Council does decide to take a future action.

In the most recent specification process (Framework Adjustment 44 to the NE Multispecies FMP), catch limits for many multispecies stocks were set at very low levels, and these restrictions are anticipated to remain for the near future. Currently, there are no specific controls on the excessive accumulation or control of fishing privileges in the multispecies fishery. There is concern that the low catch limits, in conjunction with expanded sector management, will lead to excessive consolidation and lack of diversity in the groundfish fleet. Likewise, there is concern regarding consolidation and diversity in the groundfish fleet as stocks rebuild and acceptable biological catches (ABCs) increase.

Because of these concerns and in light of the National Standards and other requirements of the Magnuson-Stevens Act related to maintaining the diverse makeup of the fleet, as well as an interest in keeping active and thriving fishing ports throughout New England, the Council is considering measures that may limit or cap the amount or type of fishing privileges that individuals or groups of individuals may acquire or control. The Council may also create other incentives for maintaining diversity and fishery infrastructure. The Council has identified two objectives for an amendment to achieve these objectives:

1. To consider the establishment of accumulation caps for the groundfish fishery; and

2. To consider issues associated with fleet diversity in the multispecies fishery.

Meetings

Eleven scoping meetings to facilitate public comment will be held on the following dates and locations:

City and date	Location
Ellsworth, Maine Tuesday, January 17, 2012 6–8 p.m	Ellsworth City Hall, 1 City Plaza, Ellsworth, ME, Phone: (207) 667–2563.
Portland, Maine Wednesday, January 18, 2012 5–7 p.m	Holiday Inn by the Bay, 88 Spring Street, Portland, ME, Phone: (207) 775–2311.
Fairhaven, Massachusetts Friday, January 20, 2012 12 a.m.–2 p.m	Seaport Inn, 110 Middle Street, Fairhaven, MA, Phone: (508) 997–1281.
So. Kingstown, Rhode Island Friday, January 20, 2012 5–7 p.m	Holiday Inn, 3009 Tower Hill Road, So. Kingstown, RI, Phone: (401) 789–1051.
Riverhead, New York Monday, January 23, 2012 7–9 p.m	Hotel Indigo East End, 1830 Route 25, Riverhead, NY, Phone: (631) 369–2200.
Manahawkin, New Jersey Tuesday, January 24, 2012 12 a.m.–2 p.m	Holiday Inn, 151 Route 72 East, Manahawkin, NJ, Phone: (732) 571–4000.
Hyannis, Massachusetts Thursday, January 26, 2012 1–3 p.m	Holiday Inn, Hyannis, 1127 Route 132, Hyannis, MA, Phone (508) 775–1153.
Plymouth, Massachusetts Thursday, January 26, 2012 5–7 p.m	Radisson Plymouth, 180 Water Street, Plymouth, MA, Phone: (508) 747–4900.
Gloucester, Massachusetts Monday, January 30, 2012 6–8 p.m	MA DMF Annisquam River Station, 30 Emerson Avenue, Gloucester, MA, Phone: (978) 828–0308.
Portsmouth, New Hampshire Tuesday, January 31, 2012 6–8 p.m	Sheraton Harborside, 250 Market Street, Portsmouth, NH, Phone: (603) 431–2000.

Issues Identified for Discussion Under This Amendment

This action will consider measures that require changes to the NE multispecies FMP. Measures may be developed and adopted in a future action. The Council may consider several types of management measures, including, but not limited to:

- No action; no additional measures would be adopted;
- Establishing individual accumulation caps, or sector accumulation caps, on a stock-specific or fishery-wide level;
- Establishing limits or caps of fishing privileges limit measures fleet-wide or separately for inshore and offshore fleets;
- Establishing usage caps for vessels fishing on a NE multispecies permit;
- Other measures to promote diversity within the fleet; and,
- Establishing performance indicators relating to the two objectives identified for the amendment (in addition to or instead of limits or caps).

The Council may deviate from these examples and develop additional approaches, consistent with their description in the Magnuson-Stevens Act and National Standard Guidelines. The above issues under consideration are described in greater detail in the scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at *http://www.nefmc.org/.*

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

Dated: December 16, 2011.

Steven Thur,

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

[FR Doc. 2011–32694 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA875

International Affairs; Identification of Nations Whose Fishing Vessels Are Engaged in Fishing in Waters Beyond Any National Jurisdiction That Target or Incidentally Catch Sharks

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

ACTION: Notice.

SUMMARY: On March 24, 2011, NMFS published a notice and requested information regarding nations whose vessels are engaged in fishing in waters beyond any national jurisdiction that target or incidentally catch sharks. However, upon further reflection and review of the statute, NMFS proposes to begin the process of making identifications by January 4, 2012, and publish the first identifications in the January 2013 Biennial Report to Congress, coincident with the next identification process under the IUU fishing and bycatch provisions of the Moratorium Protection Act.

DATES: Effective December 21, 2011.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, NMFS Office of International Affairs. (301) 427–8369.

SUPPLEMENTARY INFORMATION:

Background

The Shark Conservation Act of 2010 (S.850) amended the Moratorium Protection Act (16 U.S.C. 1826d–k) to require actions be taken by the United States to strengthen shark conservation. Specifically, these amendments to the Moratorium Protection Act require the Secretary of Commerce to identify: (1) Nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and (2) nations that have not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. The Secretary is required to begin making identifications not later than January 4, 2012.

NMFS solicited information from the public on activities of fishing vessels from foreign nations engaged in shark catch beyond any national jurisdiction on March 24, 2011 (76 FR 16616), and indicated that it anticipated making the first identifications under this statute by January 4, 2012. However, upon further reflection and review of the statute, NMFS proposes to begin the process of making identifications by January 4, 2012, and publish the first identifications in the January 2013 Biennial Report to Congress, coincident with the next identification process under the IUU fishing and bycatch provisions of the Moratorium Protection Act. This approach is consistent with the statute and will treat all identified nations equally. If identifications were made in January 2012, it would provide potentially-affected foreign nations only one year to become familiar with the new shark provisions before identification decisions were made and only one year to take the necessary actions to receive a positive certification. NMFS has already started collecting and analyzing information that could help the agency determine which nations may have vessels engaging in fishing activities or practices on the high seas that target or incidentally catch sharks.

Dated: December 15, 2011.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–32690 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA880

Marine Mammals; Issuance of Permits

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and address of recipients.

ADDRESSES: The Letters of Confirmation and related documents are available for review upon written request or by appointment in the following office: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Office of Protected Resources, Permits Division, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested Letters of Confirmation have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for bona fide scientific research that may result only in taking by level B harassment of marine mammals. The following Letters of Confirmation (LOC) were issued in Fiscal Year 2011.

File No. 15683: Issued to Dr. David Mann, University of South Florida, St.

Petersburg, FL on October 15, 2010, authorizes visual and passive acoustic recordings, photo-identification, and behavioral observations of 22 cetacean species off the West Florida Shelf (including coastal waters to the continental shelf and slope, extending northwestward to the area near the Deepwater Horizon spill site). The purpose of the study is to build on a comprehensive, unique dataset that can be used as the basis for modeling cetacean distributions to determine how cetacean distributions vary between seasons, and if it is correlated with any physical or biological features. The LOC expires on October 31, 2015.

File No. 16103: Issued to Eric Montie, Ph.D., University of South Carolina Beaufort, Bluffton, SC on December 30, 2010, authorizes visual and passive acoustic recordings, photo-identification, and behavioral observations of bottlenose dolphins (*Tursiops truncatus*) in coastal waters surrounding Hilton Head Island, South Carolina, including the May River, Cooper River, Calibogue Sound, Colleton River, Okatie River, Chechessee River, Broad River, Port Royal Sound, adjoining creeks, and along the Atlantic Ocean side of Hilton Head Island, not extending more than one mile offshore. The objectives of the study are to: (1) Acoustically and visually determine distribution of dolphins and their prey, (2) determine the acoustic behavior of dolphins and their prey, and (3) determine the effect of anthropogenic noise on dolphin and prey distributions. The LOC expires on December 31, 2015.

File No. 16104: Issued to Dr. Robert Young, Coastal Carolina University, Conway, SC on December 30, 2010, authorizes visual surveys, photo-identification, and behavioral observations in the marsh, inland and coastal waters out to 10 miles offshore of South Carolina and North Carolina. Studies will be primarily focused on the North Inlet/Winyah Bay system near Georgetown, SC, coastal waters near Murrells Inlet, SC, Cape Romain near McClellanville, SC, the Bull Creek/May River system near Bluffton, SC and Little River Inlet, SC. The purpose of the study is to: (1) Continue an on-going dolphin ecology research program, which includes studies on bioenergetics and birth timing; and (2) continue photo-ID and transect survey effort to contribute to understanding of abundance, stock structure, and residency of bottlenose dolphins along the Southeast U.S. coast. The LOC expires on December 31, 2015.

File No. 16183: Issued to Daniela Maldini, Okeanis, Moss Landing, CA on March 2, 2011, authorizes vessel surveys, photo-identification, and behavioral observations off the California coast with focuses in Monterey Bay, Morro Bay, Santa Barbara, Half-Moon Bay and San Francisco Bay within 1 km of the shoreline. The purposes of the study are to estimate the population size of bottlenose dolphins in Monterey Bay and compare the Monterey Bay photo-identification catalogue to the Southern California Bight catalogue to revise population estimates for the California coastal stock of bottlenose dolphins. The LOC expires on February 29, 2016.

File No. 16185: Issued to Dr. Andrew J. Read, Duke University, Beaufort, NC on March 30, 2011, authorizes visual and aerial surveys including photographic identification, behavioral observation and passive acoustic monitoring (PAM) with a towed array of 22 non-endangered cetacean species. Studies will focus on bottlenose dolphins, Atlantic spotted dolphins (*Stenella frontalis*) and pilot whales (*Globicephala spp.*), and be conducted in estuarine and coastal waters out to 100 nautical miles offshore of the North Carolina/Virginia border south to latitude 29 degrees N. Specific goals are to: (1) Continue with photo-ID and transect survey effort to contribute to understanding of occurrence, distribution, and ranging patterns of cetaceans along the Southeast U.S. coast, (2) investigate pilot whale interactions with longline gear, (3) conduct year-round line transect surveys in the Navy's Undersea Warfare Training Range off of North Carolina and northern Florida, (4) conduct PAM during vessel based surveys, and (5) coordinate with the stranding network to cross reference stranded animals with photo-identification catalogs. The LOC expires on April 1, 2016.

File No. 16232: Issued to GeoMarine, Inc., Plano, TX [Responsible Party: Jason Holt See; Principle Investigator: Amy Whitt] on April 7, 2011, authorizes visual surveys, close approach, photo-identification, and behavioral observations along the coast from New Jersey to North Carolina and extending from 19 to 36 nautical miles (NM) offshore. The purpose of the study is to provide baseline information on 31 non-endangered marine mammal species that would better inform offshore renewable energy developers, regulators, and other stakeholders of the distribution, abundance, behavior, and migration of marine species in nearshore waters of southern New Jersey, Delaware, Maryland, and Virginia, which is a region of significant potential offshore wind farm development. The LOC expires on March 31, 2016.

File No. 16223: Issued to Frank Fish, Ph.D., Department of Biology, West Chester University, West Chester, PA on April 25, 2011, to videotape and observe harbor seals (*Phoca vitulina*) and grey seals (*Halichoerus grypus*) off Duck Island, ME. The purpose of the study is to photo-document terrestrial locomotion of phocid seals to assess potential habitats that can be used by seals if populations are to increase along the northeastern U.S. coast. The LOC expires on August 30, 2014.

File No. 16260: Issued on April 25, 2011 to William E Bemis, Ph.D., Kingsbury Director, Shoals Marine Laboratory, Portsmouth, NH for photo-identification and observations of harbor seals and gray seals at Duck Island, ME. The study objectives are to photo-document pinniped distribution and use of islands around the Isles of Shoals, as well as monitor the inter and intra-species interactions and behaviors critical to understanding the life history of these marine mammals throughout the entire Gulf of Maine for conservation, health and management. The LOC expires on June 30, 2015.

File No. 14903: This LOC, held by Lisa Sette, Provincetown Center for Coastal Studies, Provincetown, MA, was modified on April 27, 2011, to include additional sampling locations within Nantucket Sound. The objectives of the study are to provide information on the haul-out structure and possible distribution shifts of harbor and gray seals around New England. The LOC expires on March 1, 2015.

File No. 1094–1836: Issued to Peggy Stap, Marine Life Studies, Monterey, California on April 27, 2006 was extended on April 29, 2011. The purpose of the research is to study the foraging strategies of transient and offshore killer whales (*Orcinus orca*) and investigate the abundance, distribution, movement, and frequency of occurrence of other cetacean species in the Monterey Bay National Marine Sanctuary. The LOC was extended from April 30, 2011 to July 31, 2011.

File No. 16381: Issued on May 16, 2011 to Maddalena Bearzi, Ph.D., Ocean Conservation Society, Marina Del Rey, CA for photo-identification, observations, and harassment of marine mammals during vessel surveys in the coastal and offshore waters of Southern California. The study objectives are to continue the long-term study of inshore/offshore marine mammal ecology and investigations on the presence of skin diseases and physical deformities on coastal and offshore bottlenose

dolphins. The LOC expires on May 31, 2016.

File No. 15621: Issued on June 3, 2011 to Peggy Stap, Marine Life Studies, Monterey, CA for photo-identification, passive acoustic recordings, behavioral observations, underwater photography and video, and harassment of marine mammals during vessel surveys in the Monterey Bay National Marine Sanctuary. The objectives are to: (1) study the foraging strategies of killer whales (transient and offshore) within the sanctuary and (2) investigate the abundance, distribution, movement, and frequency of occurrence of cetaceans in the sanctuary, specifically the interaction of mixed species groups. In regards to killer whales, Ms. Stap plans to investigate: (1) Foraging vocalizations, (2) topographical influence on foraging strategies, and (3) idiosyncratic prey preferences of subgroups. The LOC expires on June 15, 2016.

File No. 16299: Issued to Ann Weaver, Ph.D., Argosy University, Sarasota, FL on June 3, 2011 authorizes vessel surveys, photo-identification and behavioral observations of bottlenose dolphins near John's Pass on the west coast of Florida. The objective is to complete a study begun in 2005 that is designed to examine the before, during, and after affects of bridge construction on the abundance, distribution, and behavior of dolphins. Construction was delayed, so Dr. Weaver has not yet collected data for the after phase of her project. The LOC expires on June 15, 2016.

File No. 13427: Issued to Gregory D. Kaufman, Pacific Whale Foundation, Wailuku, HI on July 26, 2011 authorizes an amendment to LOC No. 13427–02 to expand the survey area to include inshore waters (<100 fathoms) of Maui County, Hawaii and to include vessel surveys, photo identification, focal follows, and passive acoustic recording of spinner dolphins. The objective of the additional research is to gather information on the movement patterns and acoustic behavior of spinner dolphins (*Stenella longirostris*) in the waters of Maui County, Hawaii and will test for differences in the peak time of resting between locations and differences in patterns due to the presence and absence of boats. This amended GA LOC supercedes version 13427–02, issued on November 24, 2010. The LOC expires on June 15, 2013.

File No. 16522: Issued to Wendy Noke Durden, Hubbs-SeaWorld Research Institute, Melbourne Beach, FL on September 7, 2011 authorizes vessel surveys, aerial surveys, photo-identification, and behavioral observations off the east coast of Florida from the northernmost limits of Flagler County to Jupiter Inlet, which includes the Intracoastal Waterway (ICW), Indian River Lagoon (IRL), and Halifax Rivers. The purposes of the study are to: (1) Continue monitoring IRL bottlenose dolphin abundance and distribution using line-transect aerial surveys, (2) examine dolphin abundance, distribution, residency, and habitat use of Halifax River animals, (3) determine group size and composition inhabiting the ICW, (4) document seasonal movement patterns, (5) simultaneously monitor the direct access point for influx/efflux (Ponce Inlet) of dolphins to/from the Atlantic ocean, and (6) evaluate dispersal in IRL dolphins. The LOC expires on September 30, 2016.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 15, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32689 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA877

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, CA

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the St. George Reef Lighthouse Preservation Society (SGRLPS), for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment incidental to conducting aircraft operations, lighthouse renovation, and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean from the period of February through April, 2012 and during the period of November through December, 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to SGRLPS to incidentally harass, by Level B harassment only, four species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than January 20, 2012.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* 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.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The following associated documents are also available at the same internet address: Environmental Assessment (EA) prepared by NMFS; and the finding of no significant impact (FONSI). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 713–2289 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the

Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received a letter on October 7, 2011, from the SGRLPS requesting the taking by harassment, of small numbers of marine mammals, incidental to aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station). NMFS determined that application complete and adequate on October 21, 2011. The SGRLPS aims to: (1) restore and preserve the Station on a monthly basis (February–April, and November–December, 2012); and (2) perform periodic, annual maintenance on the Station's optical light system.

The Station, which is listed in the National Park Service's National Register of Historic Places, is located on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean.

The proposed activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); (3) maintenance activities (e.g., bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the SGRLPS has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

To date, NMFS has issued two, 1-year IHAs to the SGRLPS for the conduct of the same activities from 2009 to 2011. This is the SGRLPS' third request for an IHA; the current IHA will expire on December 31, 2011 (75 FR 10564, February 25, 2011).

Description of the Specified Activity

SGRLPS proposes to conduct the proposed activities (aircraft operations, lighthouse restoration, and light maintenance activities) from the period of February through April, 2012 and during the period of November through December, 2012, at a maximum frequency of one session per month. The proposed duration for each session would last no more than three days (e.g., Friday, Saturday, and Sunday).

Aircraft Operations

Because NWSR has no safe landing area for boats, the proposed restoration activities would require the SGRLPS to transport personnel and equipment from the California mainland to NWSR by a small helicopter. Helicopter landings take place on top of the engine room (caisson) which is approximately 15 m (48 ft) above the surface of the rocks on NWSR.

SGRLPS proposes to transport no more than 15 work crew members and equipment to NWSR for each session and estimates that each session would require no more than 36 helicopter landings/takeoffs per month. During landing, the helicopter would land on the caisson to allow the work crew members to disembark and retrieve their equipment located in a basket attached to the underside of the helicopter. The helicopter would then return to the mainland to pick up additional personnel and equipment. Even though SGRLPS would use the helicopter to transport work crew members and materials on the first and last days of the three-day activity, the helicopter would likely fly to and from the Station on all three days of the restoration and maintenance activities.

Proposed schedule: SGRLPS would conduct a maximum of 16 flights (eight arrivals and eight departures) for the first day. The first flight would depart from Crescent City Airport at approximately 9 a.m. for a 6-minute flight to NWSR. The helicopter would land and takeoff immediately after offloading personnel and equipment every 20 minutes (min). The total duration of the first day's aerial operations would last for approximately 3 hours (hrs) and 26 min and would end at approximately 12:34 p.m. Crew members would remain overnight at the Station and would not return to the mainland on the first day.

For the second day, the SGRLPS would conduct a maximum of 10 flights (five arrivals and five departures) to transport additional materials on and off the islet. The first flight would depart from Crescent City Airport at 9 a.m. for a 6-minute flight to NWSR. The total duration of the second day's aerial operations would last up to three hours.

For the final day of operations, SGRLPS would conduct a maximum of eight helicopter flights (four arrivals and four departures) to transport the remaining crew members and equipment/material back to the Crescent City Airport. The total duration of the third day's helicopter operations in support of restoration would last up to 2 hrs and 14 min.

As a mean of funding support for the restoration activities, the SGRLPS will conduct public tours of the Station during the last day of the proposed restoration and maintenance activities. SGRLPS proposes to transport visitors to the Station during the Sunday work window period. Although some of these flights would be conducted solely for the transportation of tourists, those flights would be conducted at a later stage when no pinnipeds are expected to be at the Station. The proposed IHA does not include additional allowance

for animals that might be affected by additional flights for the transportation of tourists.

Lighthouse Restoration Activities

Restoration activities would include the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, and upgrading the present electrical system. The SGRLPS expects to complete most of the major restoration work within five years.

Light Maintenance Activities

The SGRLPS will need to conduct maintenance on the Station's beacon light at least once or up to two times per year within the proposed work window. Scheduled light maintenance activities would coincide with lighthouse restoration activities conducted monthly during the period of February through April, 2012 and during the period of November through December, 2012. The SGRLPS expects that maintenance activities would not exceed three hrs per each monthly session.

Emergency Light Maintenance

If the beacon light fails during the period from February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012, the SGRLPS proposes to send a crew of two to three people to the Station by helicopter to repair the beacon light. For each emergency repair event, the SGRLPS proposes to conduct a maximum of four flights (two arrivals and two departures) to transport equipment and supplies. The helicopter may remain on site or transit back to shore and make a second landing to pick up the repair personnel.

In the case of an emergency repair between May 1, 2012, and October 31, 2012, the SGRLPS would consult with the NMFS Southwest Regional Office (SWRO) to best determine the timing of the trips to the lighthouse, on a case-by-case basis, based upon the existing environmental conditions and the abundance and distribution of any marine mammals present on NWSR. The SWRO biologists would have real-time knowledge regarding the animal use and abundance of the NWSR at the time of the repair request and would make a decision regarding when the trips to the lighthouse can be made during the emergency repair time window that would have the least practicable adverse impact to marine mammals. The SWRO would also ensure that the SGRLPS' request for incidental take during emergency repairs would not exceed the number of incidental take authorized in the proposed IHA.

Complete automation of the light generating system and automatic backup system will minimize maintenance and emergency repair visits to the island. The light is solar powered using one solar panel; an installed second panel serves as a backup which is automatically activated if needed. A second smaller bulb in the lantern is activated if the primary bulb fails. Use of high quality, durable materials and thorough weatherproofing is planned to minimize trips for maintenance and repair in the future. All tools and supplies are stored on the island so that a minimal number of transport trips for emergency maintenance will be necessary.

Acoustic Source Specifications

R44 Raven Helicopter

The SGRLPS plans to charter a Raven R44 helicopter, owned and operated by Air Shasta Rotor and Wing, LLC. The Raven R44, which seats three passengers and one pilot, is a compact-sized (1134 kilograms (kg), 2500 pounds (lbs)) helicopter with two-bladed main and tail rotors. Both sets of rotors are fitted with noise-attenuating blade tip caps that would decrease flyover noise.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB re: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Aircraft Noise

Noise testing performed on the R44 Raven Helicopter, as required for Federal Aviation Administration approval, required an overflight at 150 m (492 ft) above ground level, 109 knots and a maximum gross weight of 1,134 kg (2,500 lbs). The noise levels measured on the ground at this distance and speed were 81.9 decibels (dB) re: 20 μPa (A-weighted) for the model R44 Raven I, or 81.0 dB re: 20 μPa (A-weighted) for the model R44 Raven II (NMFS, 2007).

The helicopter would land on the Station's caisson and presumably, the received sound levels would increase above 81–81.9 dB re: 20 μPa (A-weighted) at the landing area.

Characteristics of Restoration and Maintenance Noise

Restoration and maintenance activities would involve the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, upgrading the present electrical system; and annual light beacon maintenance. Any noise associated with these activities is likely to be from light construction (e.g., sanding, hammering, or use of hand drills). The SGRLPS proposes to confine all restoration activities to the existing structure which would occur on the upper levels of the Station. The pinnipeds of NWSR do not have access to this area.

NMFS expects that acoustic stimuli resulting from the proposed helicopter operations; noise from maintenance and restoration activities; and human presence has the potential to harass marine mammals, incidental to the conduct of the proposed activities. NMFS expects these disturbances to be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B Harassment) of small numbers of certain species of marine mammals.

Description of the Specified Geographic Region

The Station is located on a small, rocky islet (41°50′24″ N, 124°22′06″ W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W). NWSR is approximately 91.4 m (300 ft) in diameter that peaks at 5.18 m (17 ft)

above mean sea level. The Station, built in 1892, rises 45.7 m (150 ft) above the sea, consists of hundreds of granite blocks, is topped with a cast iron lantern room, and covers much of the surface of the islet.

Description of Marine Mammals in the Area of the Proposed Specified Activity

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific harbor seal, the eastern (Distinct Population Segment) U.S. stock of Steller sea lion, and the and the eastern Pacific stock of northern fur seal. NMFS refers the reader to Caretta *et al.,* (2011) and Allen and Angliss (2011) for general information of these species. The stock assessment reports are available at the following URLs: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011_draft.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011_draft.pdf* respectively. NMFS presents a summary of information on these species is presented below this section.

California Sea Lion

California sea lions are not listed as threatened or endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA. The California sea lion, found from southern Mexico to southwestern Canada, is now considered to be a full species, separated from Galapagos sea lion (*Z. wollebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner 2003, Wolf *et al.,* 2007, Schramm *et al.,* 2009). Genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California and (5) Northern Gulf of California (Schramm *et al.,* 2009). Animals from the temperate population range north into Canadian waters, and some movement of animals between U.S. waters and Baja California waters has been documented though the distance between the major U.S. and Baja California rookeries.

In 2011, the estimated population of the U.S. stock of California sea lion ranged from 153,337 to 296,750 animals and the maximum population growth rate was 9.2 percent when pup counts from El Niño years (1983, 1984, 1992, 1993, 1998, and 2003) were removed (Carretta *et al.,* 2011).

Major rookeries for the California sea lion exist on the Channel Islands off southern California and on the islands situated along the east and west coasts of Baja California. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. Males are polygamous, establishing breeding territories that may include up to 14 females. They defend their territories with aggressive physical displays and vocalization. Sea lions reach sexual maturity at four to five years old and the breeding season lasts from May to August. Most pups are born from May through July and weaned at 10 months old.

Crescent Coastal Research (CCR) conducted a three-year (1998–2000) survey of the wildlife species on NWSR for the SGRLPS. They reported that counts of California sea lions on NWSR varied greatly (from six to 541) during the observation period from April 1997 through July 2000. CCR reported that counts for California sea lions during the spring (April–May), summer (June–August), and fall (September–October), averaged 60, 154, and 235, respectively (CCR, 2001).

Recent counts by NMFS in July (2000–2004) have been relatively low as the total number of California sea lions recorded in 2000 and 2003 were 3 and 11, respectively (M. Lowry, NMFS, SWFSC, unpublished data). Similarly, the SGRLPS reported that California sea lions were not present on NWSR during the 2010 season; and during the current 2011 season the SGRLPS has preliminarily reported sighting a total of two California sea lions in the vicinity of NWSR (Terry McNamara, SGRLPS, pers. comm.).

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as separate stocks, inhabits the west coast of the continental United States, including: The outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters. Two of these stocks, the California stock and Oregon/Washington coast stock, of Pacific harbor seals are identified off the coast of Oregon and California for management purposes under the MMPA. However, the stock boundary is difficult to distinguish because of the continuous distribution of harbor seals along the west coast and any rigid boundary line is (to a greater or lesser extent) arbitrary, from a biological perspective (Carretta *et al.,* 2011). Due to the location of the proposed project which is situated near the border of Oregon and California, both stocks could be present within the proposed project area.

In 2011, the estimated population of the California of Pacific harbor seals ranged from 26,667 to 30,196 animals and the maximum population growth rate was 3.5 percent (Carretta *et al.,* 2011).

In California, over 500 harbor seal haul out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups. The nearest harbor seal rookery relative to the proposed project site is at Castle Rock National Wildlife Refuge, located approximately located 965 m (0.6 mi) south of Point St. George, and 2.4 km (1.5 mi) north of the Crescent City Harbor in Del Norte County, California (USFWS, 2007).

CCR noted that harbor seal use of NWSR was minimal, with only one sighting of a group of six animals, during 20 observation surveys. They hypothesized that harbor seals may avoid the islet because of its distance from shore, relatively steep topography, and full exposure to rough and frequently turbulent sea swells. For the 2010 and 2011 seasons, the SGRLPS has not observed any Pacific harbor seals present on NWSR during restoration activities.

Northern Fur Seal

Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA. Northern fur seals occur from southern California north to the Bering Sea and west to the Sea of Okhotsk and Honshu Island of Japan. Two separate stocks of northern fur seals are recognized within U.S. waters: An Eastern Pacific stock distributed among sites in Alaska, British Columbia; and a San Miguel Island stock distributed along the west coast of the continental U.S.

Northern fur seals may temporarily haul out on land at other sites in Alaska,

British Columbia, and on islets along the west coast of the continental United States, but generally this occurs outside of the breeding season (Fiscus, 1983).

In 2011, the estimated population of the San Miguel Island stock ranged from 5,395 to 9,968 animals and the maximum population growth rate was 12 percent (Carretta *et al.,* 2011).

Northern fur seals breed in Alaska and migrate along the west coast during fall and winter. Due to their pelagic habitat, they are rarely seen from shore in the continental U.S., but individuals occasionally come ashore on islands well offshore (i.e., Farallon Islands and Channel Islands in California). During the breeding season, approximately 74 percent of the worldwide population is found on the Pribilof Islands in Alaska, with the remaining animals spread throughout the North Pacific Ocean (Lander and Kajimura, 1982).

CCR observed one male northern fur seal on NWSR in October, 1998 (CCR, 2001). It is possible that a few animals may use the island more often that indicated by the CCR surveys, if they were mistaken for other otariid species (M. DeAngelis, NMFS, pers. comm.). For the 2010 and 2011 seasons, the SGRLPS has not observed any northern fur seals present on NWSR during restoration activities (Terry McNamara, SGRLPS, pers. comm.).

Steller Sea Lion

The Steller sea lion eastern stock is listed as threatened under the ESA and is categorized as depleted under the MMPA. Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.,* 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. Two separate stocks of Steller sea lions were recognized within U.S. waters: An eastern U.S. stock, which includes animals east of Cape Suckling, Alaska (144° W), and a western U.S. stock, which includes animals at and west of Cape Suckling (Loughlin, 1997). The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas (Sease and York, 2003).

In 2011, the estimated population of the eastern U.S. stock ranged from 52,847 to 72,223 animals and the maximum population growth rate was 3.1 percent (Allen and Angliss, 2011).

The eastern U.S. stock of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no rookeries located in Washington state. Counts of pups on rookeries conducted near the end of the birthing season are nearly complete counts of pup production.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS 1995, Trujillo *et al.,* 2004, Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

CCR reported that Steller sea lion numbers at NWSR ranged from 20 to 355 animals. Counts of Steller sea lions during the spring (April–May), summer (June–August), and fall (September–October), averaged 68, 110, and 56, respectively (CCR, 2001). A more recent survey at NWSR between 2000 and 2004 showed Steller sea lion numbers ranged from 175 to 354 in July (M. Lowry, NMFS/SWFSC, unpubl. data). Winter use of NWSR by Steller sea lion is presumed to be minimal, due to inundation of the natural portion of the island by large swells.

For the 2010 the SGRLPS reported that no Steller sea lions were present in the vicinity of NWSR during restoration activities. During the current 2011 season the SGRLPS has preliminarily reported sighting a total of nine California sea lions rafting near NWSR during restoration activities (Terry McNamara, SGRLPS, pers. comm.).

Other Marine Mammals in the Proposed Action Area

There are several endangered cetaceans that have the potential to transit in the vicinity of NWSR including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), north Pacific right (*Eubalena japonica*), sperm (*Physeter macrocephalus*), and southern resident killer (*Orcinus orca*) whales.

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within two km of shore. Neither CCR nor the SGRLPS has encountered California sea otters on NWSR during the course of the four-year wildlife study (CCR, 2001) nor has the SGRLPS encountered the species during the course of the previous two IHAs. The U.S. Fish and Wildlife Service (USFWS) manages the sea otter and NMFS will not consider this species further in this proposed IHA notice.

All of the aforementioned species are found farther offshore than the proposed action area and are not likely to be affected by the restoration and maintenance activities. Accordingly, NMFS will not consider these species in greater detail and the proposed IHA will only address requested take authorizations for pinnipeds.

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); and (3) maintenance activities (e.g., bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: Temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

Hearing Impairment

Marine mammals produce sounds in various important contexts—social interactions, foraging, navigating, and to responding to predators. The best available science suggests that pinnipeds have a functional aerial hearing sensitivity between 75 hertz (Hz) and 75 kilohertz (kHz) and can produce a diversity of sounds, though generally from 100 Hz to several tens of kHz (Southall, *et al.,* 2007).

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Pinnipeds have the potential to be disturbed by airborne and underwater noise generated by the engine of the aircraft (Born, Riget, Dietz, and Andriashek, 1999; Richardson, Greene,

Malme, and Thomson, 1995). Data on underwater TTS-onset in pinnipeds exposed to pulses are limited to a single study which exposed two California sea lions to single underwater pulses from an arc-gap transducer and found no measurable TTS following exposures up to 183 dB re: 1 µPa (peak-to-peak) (Finneran, Dear, Carder, and Ridgway, 2003).

TTS has been demonstrated and studied in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). In 2004, researchers measured auditory fatigue to airborne sound in harbor seals, California sea lions, and northern elephant seals (*Mirounga angustirostris*) after exposure to non-pulse noise for 25 minutes (Kastak, Southall, Holt, Kastak, and Schusterman, 2004). In the study, the harbor seal experienced approximately 6 dB of TTS at 99 dB re: 20 µPa. Onset of TTS was identified in the California sea lion at 122 dB re: 20 µPa. The northern elephant seal experienced TTS-onset at 121 dB re: 20 µPa (*Kastak et al.,* 2004).

There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson et al., 1995) and to NMFS' knowledge, there has been no specific documentation of TTS, let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions.

In 2008, NMFS issued an IHA to the U.S. Fish and Wildlife Service (USFWS) for the take of small numbers of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 feet (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island. The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e.,* alert head raises without moving or limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 dB re: 20 µPa) non-pulse sounds often leave haulout areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007). Any noise attributed to the SGRLPS' proposed helicopter operations on NWSR would be short-term (approximately 5 min per trip). NMFS would expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. Per Richardson *et al.* (1995), approaching aircraft generally flush animals into the water and noise from a helicopter is typically directed down in a ''cone'' underneath the aircraft. As the helicopter landings take place 15 m (48 ft) above the surface of the rocks on NWSR, NMFS presumes that the received sound levels would increase above 81–81.9 dB re: 20 µPa (A-weighted) at the landing pad. However, NMFS does not expect that the increased received levels of sound from the helicopter would cause TTS or PTS because the pinnipeds would flush before the helicopter approached NWSR; thus increasing the distance between the pinnipeds and the received sound levels on NWSR during the proposed action.

Behavioral Disturbance

There is increasing recognition that the effect of human disturbance on wildlife is highly dependent on the nature of the disturbance (Burger *et al.,* 1995; Klein *et al.,* 1995; and Kucey, 2005). Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.,* 2000; and Kucey and Trites, 2006). The apparent skittishness of both harbor seals and Steller sea lions raises concerns regarding behavioral and physiological impacts to individuals and populations experiencing high levels of human disturbance. It is well known that human activity can flush harbor seals off haul out sites (Allen et al., 1984; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999; Mortenson *et al.,* 2000).

The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). Stevens and Boness (2003) concluded that after the 1997–98 El Niño, when populations of the South American fur seal, *Arctocephalus australis,* in Peru declined dramatically, seals abandoned some of their former primary breeding sites, but continued to breed at adjacent beaches that were more rugged (*i.e.,* less likely to be used by humans). Abandoned and unused sites were more likely to have human disturbance than currently used sites. In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

It is likely that the initial helicopter approach to the Station would cause a subset, or all of the marine mammals hauled out on NWSR to depart the rock and flush into the water. The physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Airborne sound from a low-flying helicopter or airplane may be heard by marine mammals while at the surface or underwater. In general, helicopters tend to be noisier than fixed wing aircraft of similar size and underwater sounds from aircraft are strongest just below the surface and directly under the aircraft. Noise from aircraft would not be expected to cause direct physical effects but have the potential to affect behavior. The primary factor that may influence abrupt movements of animals is engine noise, specifically changes in engine noise. Responses by mammals could include hasty dives or turns, change in course, or flushing and stampeding from a haul out site. There are few well documented studies of the impacts of aircraft overflight over pinniped haul out sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.,* 2001).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.,* 1995). The Lowest Observed Adverse Effects Levels (LOAELs) are rather variable for pinnipeds on land, ranging from just over 150 m (492 ft) to about 2,000 m (6,562 ft) (Efroymson *et al.,* 2001). A conservative (90th percentile) distance effects level is 1,150 m (3,773 ft). Most thresholds represent movement away from the overflight. Bowles and Stewart (1980) estimated an LOAEL of 305 m (1,000 ft) for helicopters (low and landing) in California sea lions and

harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haul out and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

If pinnipeds are present on NWSR, it is likely that a helicopter landing at the Station would cause 100 percent of the pinnipeds on NWSR to flush; however, when present, they appear to show rapid habituation to helicopter landing and departure (Crescent Coastal Research, 2001; Guy Towers, SGRLPS, pers. com.). According to the CCR Report (2001), while up to 40 percent of the California and Steller sea lions present on the rock have been observed to enter the water on the first of a series of helicopter landings, as few as zero percent have flushed on subsequent landings on the same date.

If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of the Station into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and move into the water upon initial helicopter approaches. The movement to the water is expected to be gradual due to the required controlled helicopter approaches (see Proposed Mitigation section), the small size of the aircraft, the use of noise-attenuating blade tip caps on the rotors, and behavioral habituation on the part of the animals as helicopter trips continue throughout the day. During the sessions of helicopter activity, if present on NWSR, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haul-outs.

Sea lions have shown habituation to helicopter flights within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrival/departures within a short time period, animals are expected to show less response to subsequent landings. No impact on the population size or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or northern fur seals is expected to occur.

Restoration and maintenance activities would involve the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, upgrading the present electrical system; and annual light beacon maintenance. Any noise associated with these activities is likely to be from light construction (e.g., sanding, hammering, or use of hand drills) and the pinnipeds may be disturbed by human presence. Animals respond to disturbance from humans in the same way as they respond to the risk of predation, by avoiding areas of high risk, either completely or by using them for limited periods (Gill *et al.,* 1996).

Mortality

Sudden movement of large numbers of animals may cause a stampede. In order to prevent such stampedes from occurring within the sea lion colony, certain mitigation requirements and restrictions, such as controlled helicopter approaches and limited access period during the pupping season, will be imposed should an IHA be issued. As such, and because any pinnipeds nearby likely would avoid the approaching helicopter, the SGRLPS anticipates that there will be no instances of injury or mortality during the proposed project.

Anticipated Effects on Habitat

The NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR. The SGRLPS proposes to confine all restoration activities to the existing structure which would occur on the upper levels of the Station which are not used by marine mammals. The SGRLPS would remove all waste, discarded materials and equipment from the island after each visit. The proposed activities will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

As a way to reduce potential Level B behavioral harassment to marine mammals that would result from the proposed project, NMFS proposes that the following mitigation measures would be required.

Time and Frequency: Lighthouse restoration activities are to be conducted at maximum of once per month between February 10, 2012, through April 30, 2012, or between November 1, 2012, through December 31, 2012. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

Helicopter Approach and Timing Techniques: The SGRLPS shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haul-out on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (e.g., 800–1,000 ft, or 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind condition) such helicopter approach and timing techniques cannot be achieved, the SGRLPS must abort the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with People on Island: The SGRLPS members and restoration crews shall be instructed to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. Although no impacts from these activities were seen during the 2001 CCR study, it is relatively simple to avoid this potential impact. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded to all tourists and other personnel.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included

consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Summary of Previous Monitoring

The SGRLPS complied with the mitigation and monitoring required under the previous authorization for the 2010 season. In compliance with the 2010 IHA, the SGRLPS submitted a final report on the activities at the Station, covering the period of January 27, 2010 through April 30, 2010. During the effective dates of the 2010 IHA, the SGRLPS conducted two sessions of aircraft operations and restoration activities on NWSR which did not exceed the activity levels analyzed under the 2010 authorization.

The 2010 IHA required that the SGRLPS conduct a pre-restoration and post-restoration aerial survey of all marine mammals hauled-out on NWSR for each session. NMFS restricted the SGRLPS' taking of aerial photographs to an altitude greater than 300 m (984 ft) during the first arrival flight and the last departure flight. This is the minimum altitude set within the 2010 Biological Opinion (BiOp) Incidental Take Statement (ITS) which follows the reference distance of 300 m (984 ft) for in-air measurements and predictions established by Richardson *et al.* (1995).

On February 26, 2010, the SGRLPS' photographed the haulout areas on the initial approach to NWSR at an altitude of 900 m (2,953 ft). During the approach, the photographer observed no animals hauled out on NWSR. The SGRLPS observed no animals hauled on NWSR during the two-day restoration session and no pinnipeds were present during the helicopter's February 28th departure flight to the mainland.

On April 9, 2010, the SGRLPS' photographed the haulout areas on the initial approach to NWSR at an altitude of 900 m (2,953 ft). Similar to the February session, the photographer observed no animals hauled out on NWSR during approach. The SGRLPS observed no animals hauled on NWSR during the three-day restoration session and no pinnipeds were present during the helicopter's April 11th departure flight to the mainland.

The SGRLPS observed no animals hauled on NWSR during the entirety of each session. As there were no observed impacts to pinnipeds from these activities, NMFS was unable to assess the effectiveness of mitigation measures for helicopter approaches set forth in the 2010 IHA. However, the 2010 IHA restricted SGRLPS' access to NWSR during the pupping season. These results did not refute NMFS' original findings.

Proposed Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

At least once during the period between February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012 a qualified biologist shall be present during all three workdays at the Station. The biologist hired will be subject to approval of NMFS and this requirement may be modified depending on the results of the second year of monitoring.

The qualified biologist shall document use of the island by the pinnipeds, frequency, (i.e., dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the SGRLPS will notify the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. Aerial photo coverage of the island shall be completed from the same helicopter used to transport the SGRLPS personnel to the island during restoration trips. Photographs of all marine mammals hauled out on the island shall be taken at an altitude greater than 300 m (984 ft) by a skilled photographer, prior to the first landing on each visit included in the monitoring program. Photographic documentation of marine mammals present at the end of each three-day work session shall also be made for a before and after comparison. These photographs will be forwarded to a biologist capable of discerning marine mammal species. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The original photographs can be made available to NMFS or other marine mammal experts for inspection and further analysis.

Proposed Reporting

The SGRLPS personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. SGRLPS and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

Interim Monitoring Report

The SGRLPS will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Final Monitoring Report

In addition to the interim reports, the SGRLPS will submit a draft Final Monitoring Report to NMFS no later than 90 days after the project is completed to the Regional Administrator and the Director of Office of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the SGRLPS must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the SGRLPS receives no comments from NMFS on the draft Final Monitoring Report, the draft Final Monitoring Report will be considered to be the Final Monitoring Report.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., stampede), L–DEO shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the SGRLPS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The SGRLPS may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the biologist (if present) determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the SGRLPS will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the SGRLPS to determine whether modifications in the activities are appropriate.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the lead biologist (if present) determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the SGRLPS will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The SGRLPS will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the helicopter operations and restoration and maintenance activities on NWSR.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), NMFS estimates that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April,1998) present on NWSR by 6 months of the proposed restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 6 months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 6 months) could be potentially affected by Level B behavioral harassment over the course of the proposed IHA. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hrs of aircraft operations during the course of the proposed activity. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected nor requested.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by Level A harassment, serious injury, or mortality are anticipated to occur as a result of the SGRLPS' proposed activities, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the proposed activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the SGRLPS' planned helicopter operations and restoration/maintenance activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the helicopter operations and restoration/maintenance activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Steller sea lion, eastern Distinct Population Segment (DPS) is listed as threatened under the ESA and occurs in the planned action area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA with the Southwest Region, NMFS. On January 27, 2010, the Southwest Region issued a BiOp and concluded that the issuance of IHAs are likely to adversely affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has designated critical habitat for the eastern Distinct Population Segment of Steller sea lions in California at Año Nuevo Island, Southeast Farallon Island, Sugarloaf Island and Cape Mendocino, California pursuant to section 4 of the ESA (see 50 CFR 226.202(b)). Northwest Seal Rock is neither within nor nearby these designated areas. Finally, the BiOp included an ITS for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take.

NMFS has reviewed the 2010 BiOp and determined that there is no new information regarding effects to Stellar sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the ITS. Therefore, the proposed IHA does not require the reinitiation of Section 7 consultation under the ESA.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to the SGRLPS, NMFS prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled ''Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California,'' evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, NMFS concluded that issuance of an IHA November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the SGRLPS' activities. In conjunction with the SGRLPS' 2012 application, NMFS has again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, intends to reaffirm the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

Dated: December 16, 2011.

James H. Lecky,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32692 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA-DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

DATES: *Effective Date:* December 21, 2011.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain cotton/nylon/spandex raschel knit open work crepe printed fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under ''Approved Requests,'' Reference number: 159.2011.11.10.Fabric.SS&AforHansoll Textile,Ltd

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA-DR Implementation Act''), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background: The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in

commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA-DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR *(Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On November 10, 2011, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates on behalf of Hansoll Textile Ltd. for certain cotton/nylon/spandex raschel knit, open work crepe, printed fabric, as specified below. On November 15, 2011, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by November 28, 2011, and any Rebuttal Comments to a Response (''Rebuttal'') must be submitted by December 2, 2011, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA-DR Commercial Availability proceedings.

SPECIFICATIONS: Certain Cotton/Nylon/Spandex Raschel Knit Open Work Crepe Printed Fabric

HTS: 6005.24.00.

Fabric Type: Raschel knit, open work crepe fabric, with a blistered surface with interstices covering 15% of the surface area, printed.

Fiber content: Cotton 61–65%; Nylon 32–34%; Spandex 3–5%.

Yarn size:

Cotton:
Metric: 28/2 to 32/2.
English: 16.5/2 to 19/2.
Nylon:
Metric: 150–160 denier/10 filament.
English: 56–60 denier/10 filament.
Nylon (wrapping yarn for spandex core):
Metric: 113–150 denier/36 filament.
English: 60–80 denier/36 filament.
Spandex (wrapped in nylon):
Metric: 40–45 denier.
English: 200–225 denier.

Weight:
Metric: 160–180 grams per sq. meter.
English: 4.7–5.3 ounces per sq. yard.

Width:
Metric: 137.2–147.4 centimeters, cuttable.
English: 54–58 inches, cuttable.

Machine gauge: 18.

Bar: 18.

Coloration: Pigment print.

Performance criteria:
1. Dimensional stability: −7%/+2%, AATCC 135/150.
2. Fabric skewing: 4%, AATCC 179.
3. Fabric weight: −8%/+8%.

Kim Glas,

Chairman, Committee for the Implementation of Textile and Apparel.

[FR Doc. 2011–32639 Filed 12–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice for the Great Lakes and Mississippi River Interbasin Study (GLMRIS)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Chicago District has posted on *http://glmris.anl.gov* the ''Inventory of Available Controls for Aquatic Nuisance Species of Concern—Chicago Area Waterway System'' (ANS Control Paper). An Aquatic Nuisance Species (ANS) Control is an option or technology that may be applied to prevent ANS transfer via aquatic pathways. The ANS Control Paper identifies the range of options or technologies available to target the ANS of Concern in the Chicago Area Waterway System (CAWS). These ANS of Concern—CAWS were previously identified as non-native species that are the initial focus of GLMRIS.

In a December 8, 2010 notice of intent, **Federal Register** Notice (75 FR 76447), USACE announced it will prepare a feasibility report and an environmental impact statement (EIS) for GLMRIS. GLMRIS is a feasibility study of the range of options and technologies that could be applied to prevent ANS transfer between the Great Lakes and Mississippi River basins through aquatic pathways. USACE is conducting GLMRIS in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations. The ANS Control Paper is an interim product of GLMRIS. For additional information regarding GLMRIS, please refer to the project Web site *http://glmris.anl.gov.*

This notice announces a comment period during which USACE is asking the public to submit (i) information on ANS Controls that may be effective at preventing the transfer of ANS of Concern—CAWS but that are not included in the paper, or (ii) comments regarding ANS Controls identified in the paper. This notice also announces the dates and times of conference calls hosted by USACE for the purpose of providing the public an opportunity to ask questions regarding the ANS Control Paper.

DATES: USACE announces an ANS Control Comment Period from Wednesday, December 21, 2011, through Friday, February 17, 2012. Please refer to the ''*ANS Control Comment Period*'' section below for details on the information USACE is seeking during this comment period and instructions on comment submittal.

USACE will be hosting two (2) conference calls regarding the paper. These calls are open to the public. The first call is scheduled on Tuesday, January 10, 2012 from 2 p.m.–4 p.m. (CST). The second call is scheduled on

Wednesday, February 8, 2012 from 10 a.m.–12 p.m. (CST).

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about GLMRIS, please contact USACE, Chicago District, Project Manager, Mr. David Wethington, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, or *by email: david.m.wethington@usace.army.mil.*

For media inquiries, please contact USACE, Chicago District, Public Affairs Officer, Ms. Lynne Whelan, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, *by phone:* (312) 846–5330 or *by email: lynne.e.whelan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background.* USACE is conducting GLMRIS in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations. For GLMRIS, USACE will explore ANS Controls that could be applied to prevent ANS transfer between the Great Lakes and Mississippi River basins through aquatic pathways. Potential ANS Controls may include, but are not limited to, hydrologic separation of the basins, modification of water quality or flow within a waterway, chemical application to ANS, collection and removal of ANS from a waterway, as well as other types of controls currently in research and development.

USACE will develop screening criteria consistent with study objectives and refine the list of ANS Controls to determine which warrant further consideration. USACE will formulate plans comprised of one or more of the screened ANS Controls in consideration of four criteria: Completeness, effectiveness, efficiency, and acceptability. USACE will then evaluate and compare the effects of the alternative plans.

USACE is conducting GLMRIS in accordance with the National Environmental Policy Act (NEPA) and with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies,* Water Resources Council, March 10, 1983.

2. *ANS Control Paper.* The ANS Control Paper is an interim product of GLMRIS and is found at *http://glmris.anl.gov/documents/interim/anscontrol/index.cfm.* Through literature search and consultation with experts in the field of ANS and ANS Controls, USACE identified the ANS Controls found in the paper. These ANS Controls are those that may be effective at preventing the transfer of ANS of Concern—CAWS via aquatic pathways. ANS of Concern—CAWS are the non-native species that are the initial focus of GLMRIS.

3. *ANS Control Comment Period.* USACE is currently soliciting information from the public on ANS Controls that may be effective on ANS of Concern—CAWS but that may be missing from the list developed for the ANS Control Paper; USACE is also seeking comments on the included ANS Controls. The comment period runs from December 21, 2011 through February 17, 2012. Comments may be submitted in the following ways:

- *GLMRIS project Web site:* Use the web form found at *www.glmris.anl.gov* through February 17, 2012;
- *Mail:* Mail written information to GLMRIS ANS Control Comments, 111 N. Canal, Suite 600, Chicago, IL 60606. Comments must be postmarked by February 17, 2012; and
- *Hand Delivery:* Comments may be hand delivered to the USACE, Chicago District office located at 111 N. Canal St., Suite 600, Chicago, IL 60606 between 8 a.m. and 4:30 p.m. Comments must be received by Friday, February 17, 2012.

USACE will consider all comments received during this comment period. If necessary, USACE will update the ANS Control Paper and in spring 2012, will post an updated ANS Control Paper to the GLMRIS Web site.

4. *Public Conference Calls.* USACE will host conference calls on Tuesday, January 10, 2012 from 2 p.m.–4 p.m. (CST) and Wednesday, February 8, 2012 from 10 a.m.–12 p.m. (CST). The conference calls are intended to provide the public with an opportunity to ask questions regarding the ANS Control Paper. Call-in information for both calls is:

USA Toll-Free: (877) 336–1839.

Access Code: 8506361.

5. *Authority.* This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061, Pub. L. 110–114, 121 STAT. 1121, and NEPA of 1969, 42 U.S.C. 4321, et seq., as amended.

Dated: December 14, 2011.

Susanne J. Davis,

Chief, Planning Branch, Chicago District, Corps of Engineers.

[FR Doc. 2011–32654 Filed 12–20–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

U.S. Department of Energy Audit Guidance: For-Profit Recipients

AGENCY: U.S. Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) seeks information and comments related to the requirements and guidance for independent audit organizations in conducting program compliance audits of for-profit recipients of federal financial assistance from DOE under its financial assistance regulations.

DATES: Written comments and information are requested on or before January 20, 2012.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by any of the following methods:

- *Email to: FederalRegisterAuditComments@hq.doe.gov.* Hand Delivery/Courier: Ms. Kimberly Krizanovic, U.S. Department of Energy, 4th Floor (Suite 4A–236), 1000 Independence Avenue SW., Washington, DC 20585. Phone: (202) 586–5304. Please submit one signed paper original.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Krizanovic, U.S. Department of Energy, Office of the Chief Financial Officer, 4th Floor (Suite 4A–236), 1000 Independence Avenue SW., Washington, DC 20585. Phone: (202) 586–5304. Email: *kimberly.krizanovic@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *U.S. Department of Energy Audit Guidance: For-Profit Recipients* provides requirements and guidance for independent audit organizations in conducting program compliance audits of for-profit recipients of federal financial assistance from the Department of Energy (DOE) under Regulation 10 CFR 600.316. The requirements for financial statement audits of for-profit recipients are not provided for under Regulation 10 CFR 600.316, which applies only to program compliance audits. As such, this Audit Program and all compliance supplements (Parts II and III of this guidance) do not apply to financial statement audits. Audits of financial statements are allowable as indirect costs if the recipient normally has financial statement audits. However, DOE is not requiring an audit of financial statements solely to address Regulation 10 CFR 600.316, nor are financial statement audits allowable as direct costs to satisfy the requirements of Regulation 10 CFR 600.316.

Compliance audits as required under Regulation 10 CFR 600.316 and this

Audit Program must be conducted in accordance with the requirements and guidance set forth in Statement on Auditing Standards No. 117, *Compliance Audits* (SAS 117) and generally accepted government auditing standards (GAGAS). The audit procedures provided in this Audit Program are the minimum necessary for uniform and consistent audit coverage.

DOE seeks comment and information on this audit guidance to potentially improve the usefulness and clarity of the guidance. You may access the guidance at: *http://energy.gov/management/downloads/draft-profit-audit-guidance-fy-2011.*

Issued in Washington, DC, on December 15, 2011.

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

[FR Doc. 2011–32622 Filed 12–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–46–000.

Applicants: Decker Energy International, Inc., Craven County Wood Energy LP, Grayling Generating Station, LP, AltaGas Services (U.S.) Inc.

Description: Joint Application of Decker Energy International, Inc., *et al.* for authorization under Federal Power Act Section 203(a)(1).

Filed Date: 12/13/11.

Accession Number: 20111213–5018.

Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: EC12–47–000.

Applicants: Lea Power Partners, LLC, Waterside Power, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Waterside Power, LLC, *et al.*

Filed Date: 12/12/11.

Accession Number: 20111212–5202.

Comments Due: 5 p.m. ET 1/2/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–75–002.

Applicants: Public Power, LLC.

Description: Amendment to MBR Tariff in Compliance with Order 697 to be effective 10/13/2011.

Filed Date: 12/12/11.

Accession Number: 20111212–5002.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–361–001.

Applicants: South Carolina Electric & Gas Company.

Description: Compliance filing—Schedule 1 (Part of Settlement Agreement) to be effective 10/21/2011.

Filed Date: 12/12/11.

Accession Number: 20111212–5074.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–591–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest-Dairyland Agreements to be effective 2/13/2012.

Filed Date: 12/12/11.

Accession Number: 20111212–5072.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–592–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii): Corn Belt Agreements to be effective 2/13/2012.

Filed Date: 12/12/11.

Accession Number: 20111212–5077.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–593–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii): Great River Energy Agreements to be effective 2/13/2012.

Filed Date: 12/12/11.

Accession Number: 20111212–5091.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–594–000.

Applicants: New York Independent System Operator, Inc.

Description: Niagara Mohawk and Village of Solvay Cost Reimbursement Agreement no. 1810 to be effective 11/22/2011.

Filed Date: 12/12/11.

Accession Number: 20111212–5100.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–595–000.

Applicants: Constellation Power Source Generation, Inc.

Description: Joint Reactive Rate Filing for the Keystone Project to be effective 1/31/2012.

Filed Date: 12/12/11.

Accession Number: 20111212–5179.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–596–000.

Applicants: Constellation Power Source Generation, Inc.

Description: Joint Reactive Rate Filing for the Conemaugh Project to be effective 1/31/2012.

Filed Date: 12/12/11.

Accession Number: 20111212–5184.

Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: ER12–597–000.

Applicants: New York State Reliability Council, L.L.C.

Description: New York State Reliability Council, L.L.C.'s Submission of the Revised Installed Capacity Requirement for the New York Control Area.

Filed Date: 12/12/11.

Accession Number: 20111212–5201.

Comments Due: 5 p.m. ET 1/2/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–94–000.

Applicants: Middletown Coke Company, LLC.

Description: Form 556- Notice of self-certification of qualifying cogeneration facility status of Middletown Coke Company, LLC.

Filed Date: 12/12/11.

Accession Number: 20111212–5161.

Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32580 Filed 12–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–605–000]

Power Network New Mexico, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Power Network New Mexico, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for

blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 3, 2012.

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 Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32583 Filed 12–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–73–002]

Southcross CCNG Transmission Ltd.; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on December 13, 2011, Southcross CCNG Transmission Ltd. (Southcross CCNG) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, Southcross CCNG requests that the date for its next rate filing be extended to April 20, 2015, which is five years from the date of Southcross CCNG's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2011.

Dated: December 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32581 Filed 12–20–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–11–003]

Southcross Mississippi Pipeline, L.P.; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on December 13, 2011, Southcross Mississippi Pipeline, L.P. (Southcross) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, Southcross requests that the date for its next rate filing be extended to February 1, 2014, which is five years from the date of Southcross' most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene, or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant.

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2011.

Dated: December 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32582 Filed 12–20–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0005; FRL–9330–3]

Pesticide Products; Receipt of Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before January 20, 2012.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the pesticide of interest, specified within Unit II., 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 Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The 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 email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or email. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the

disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Numbers:* 66330–45 and 66330–46. *Docket Number:* EPA–HQ–OPP–2011–0641. *Company Name and Address:* Arysta LifeScience, North America LLC., 15401 Weston Parkway, Suite 150, Cary, NC 27513. *Active Ingredient:* Amicarbazone. *Proposed Uses:* Turf (Golf Courses, Sod Farms, Residential and Commercial Turf Sites, Park and Recreational Areas, School Grounds, and other Turf Areas) and Conifers in Nurseries and Field Plantings (including Christmas Trees). *Contact:* Michael Walsh, (703) 308–2972, *walsh.michael@epa.gov.*

2. *Registration Number:* 71711–6. *Docket Number:* EPA–HQ–OPP–2011–1002. *Company Name and Address:* Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808. *Active Ingredient:* Pyraflufen-ethyl. *Proposed Uses:* Hops and Peanuts. *Contact:* Tracy White, (703) 308–0042, *white.tracy@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 14, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–32656 Filed 12–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9608–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Arizona: *WildEarth Guardians* v. *Jackson,* No. 2:11-cv-01661–ROS (D. Ariz.). On August 24, 2011, Plaintiff filed a complaint alleging that EPA failed to perform a nondiscretionary duty to promulgate the area designations for the 2008 ground-level ozone NAAQS within the time lines set forth in section 107(d)(1)(B) of the CAA. The proposed consent decree establishes a deadline of May 31, 2012 for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by *January 20, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0935, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5598; fax number (202) 564–5603; email address: *tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel the Administrator to promulgate area designations for the 2008 ground-level ozone NAAQS pursuant to section 107(d)(1)(B) of the CAA. The proposed consent decree requires that no later than May 31, 2012, EPA shall sign a notice of the Agency's promulgation of area designations for the 2008 ground-level ozone NAAQS pursuant to section 107(d) of the CAA, and within 10 business days following signature of the notice, EPA will send the notice to the **Federal Register** for review and publication. After EPA fulfills its obligations under the decree, the parties shall file a joint request to the Court to terminate the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0935) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Patricia Embrey,

Acting Associate General Counsel.

[FR Doc. 2011–32648 Filed 12–20–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0939; FRL–9329–7]

Registration Review; Pesticide Dockets Opened for Review and Comment, and Notice of Availability of Final Work Plans for Certain Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

This document also announces the availability of amended final work plans for the registration review of the pesticides cryolite, prodiamine, asulam, and etofenprox.

DATES: Comments must be received on or before February 21, 2012.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., 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 Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or

email. The 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 email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information contact:* The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. Environmental justice. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and Number	Docket ID No.	Chemical review manager, telephone number, e-mail address
Benfluralin, 2030	EPA–HQ–OPP–2011–0931.	Cathryn Britton, 703–308–0136, *stclair.katherine@epa.gov.*
Bis(trichloromethyl)sulfone, 2055	EPA–HQ–OPP–2011–0614.	Seiichi Murasaki, 703–347–0163, *murasaki.seiichi@epa.gov.*
Clothianidin, 7620	EPA–HQ–OPP–2011–0865.	Rusty Wasem, 703–305–6979, *wasem.russell@epa.gov.*
Dinotefuran, 7441	EPA–HQ–OPP–2011–0920.	Steven Snyderman, 703–347–0249, *snyderman.steven@epa.gov.*
Methylene bis(thiocyanate), 2415	EPA–HQ–OPP–2011–0613.	Rebecca von dem Hagen, 703–305–6785, *vondemhagen.rebecca@epa.gov.*
Orthosulfamuron, 7270	EPA–HQ–OPP–2011–0438.	Khue Nguyen, 703–347–0248, *nguyen.khue@epa.gov.*
Paraquat dichloride, 0262	EPA–HQ–OPP–2011–0855.	Molly Clayton, 703–603–0522, *clayton.molly@epa.gov.*
Pyrethrin and derivatives, 2580	EPA–HQ–OPP–2011–0885.	Joel Wolf, 703–347–0228, *wolf.joel@epa.gov.*
Sodium Omadine, 0209	EPA–HQ–OPP–2011–0611.	Eliza Blair, 703–308–7279, *blair.eliza@epa.gov.*
Sumithrin (phenothrin), 0426	EPA–HQ–OPP–2011–0539.	Carissa Cyran, 703–347–8781, *cyran.carissa@epa.gov.*
Tetramethrin, 2660	EPA–HQ–OPP–2011–0907.	Monica Wait, 703–347–8019, *wait.monica@epa.gov.*
Thiamethoxam, 7614	EPA–HQ–OPP–2011–0581.	Carissa Cyran, 703–347–8781, *cyran.carissa@epa.gov.*
Thiobencarb, 2665	EPA–HQ–OPP–2011–0932.	Kelly Ballard, 703–305–8126, *ballard.kelly@epa.gov.*
Tri-n butyl tetradecyl phosphonium chloride, 5111	EPA–HQ–OPP–2011–0952.	Eliza Blair, 703–308–7279, *blair.eliza@epa.gov.*
Undecylenic Acid, 4095	EPA–HQ–OPP–2011–0910.	Tom Myers, 703–308–8589, *myers.tom@epa.gov.*

EPA is announcing the availability of amended final work plans for the registration review of the pesticides cryolite (docket EPA–HQ–OPP–2011–0173), prodiamine (docket EPA–HQ–OPP–2010–0920), and asulam and sodium asulam (docket EPA–HQ–OPP–2010–0783). These final work plans have been amended to incorporate changes to data requirements for registration review. EPA is also announcing the availability of the amended final work plan for etofenprox (docket EPA–HQ–OPP–2007–0804); this final work plan was amended to include pet spot-on product label changes and the issuance of a data call-in (DCI) to support the registration review of etofenprox.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

i. To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

ii. The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

iii. Submitters must clearly identify the source of any submitted data or information.

iv. Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the

Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 14, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–32658 Filed 12–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OW–2011–0466; FRL–9609–3]

Notice of Availability of Draft Recreational Water Quality Criteria and Request for Scientific Views

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of the draft document *Recreational Water Quality Criteria* (RWQC). The document contains the EPA's draft ambient water quality criteria recommendations for protecting human health in ambient waters that are designated for primary contact recreation. CWA Section 304(c) water quality criteria recommendations are intended as guidance to States and authorized Tribes in developing water quality standards. The draft RWQC document describes the relevant scientific findings, explains how these findings were used to derive criteria, and lists the water quality methods associated with the criteria.

The draft RWQC differs from the current 1986 RWQC in the following ways: the EPA introduces a new term, Statistical Threshold Value (STV), as a clarification and replacement for the term single sample maximum (SSM); there are no longer recommendations for different criteria values for beaches used with more or less frequency; the EPA introduces a rapid analytical technique for the detection of enterococci in recreational water; the EPA provides information on tools for assessing and managing recreational waters, such as predictive modeling, and for developing site-specific criteria.

The CWA, as amended by the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000, requires the EPA to conduct studies associated with pathogens and human health under Section 104(v), and to publish new or revised criteria for pathogens and pathogen indicators based on those studies under Section 304(a)(9). The draft criteria announced today for scientific views are the draft new or revised criteria that EPA is required to publish under Section 304(a)(9) of the CWA, as amended by the BEACH Act.

DATES: Scientific views must be received on or before February 21, 2012. Comments postmarked after this date may not be considered.

ADDRESSES: Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2011–0466, and obtain the document (EPA–HQ–OW–2011–0466–0002) by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: OW-Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 28221T; 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave. NW., EPA West, Room 3334, Washington, DC. 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–OW–2011–0466. 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 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 email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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 Office of Water Docket/EPA/DC, 1301 Constitution Ave. NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For questions concerning the science supporting this criteria, contact Sharon Nappier, Health and Ecological Criteria Division (4304T), *nappier.sharon@epa.gov*, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 566–0740. For questions concerning the use of EPA's criteria recommendations, contact Tracy Bone, Standards and Health Protection Division (4305T), *bone.tracy@epa.gov*, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 564–5257.

SUPPLEMENTARY INFORMATION:

I. What are Section 304(a) water quality criteria?

Section 304(a) water quality criteria are recommendations developed by EPA under authority of section 304(a) of the Clean Water Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health.

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to the EPA when promulgating federal regulations under section 303(c) when such action is necessary. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.,* aquatic life, recreational use). The EPA's water quality criteria recommendations are not regulations. Thus, the EPA's recommended criteria do not constitute legally binding requirements. States and authorized Tribes may adopt other scientifically defensible water quality criteria that differ from these recommendations. When adopting new or revised water quality standards, the States and authorized Tribes must adopt criteria that are scientifically defensible and protective of the designated uses of the bodies of water. States have the flexibility to do this by adopting criteria based on (1) EPA's recommended criteria, (2) EPA's criteria modified to reflect site-specific conditions, or (3) other scientifically defensible methods.

II. What are the recreational water quality criteria recommendations?

The EPA is today publishing the draft *Recreational Water Quality Criteria* (EPA–OW–2011–0466–0002) recommendations for protecting human health. The EPA evaluated the available data and determined that the designated use of primary contact recreation would be protected if the following criteria were adopted into water quality standards:

(a) Fresh Water Criteria

Magnitude: Culturable *E. coli* at a geometric mean (GM) of 126 colony forming units (cfu) per 100 milliliters (mL) and a statistical threshold value (STV) of 235 cfu per 100 mL measured using EPA Method 1603, or any other equivalent method that measures culturable *E. coli;* culturable enterococci at a GM of 33 cfu per 100 mL and an STV of 61 cfu per 100 mL measured using EPA Method 1600, or any other equivalent method that measures culturable enterococci; or both of the above criteria.

Duration: For calculating the GM and associated STV, EPA recommends a duration between 30 days and 90 days. The duration for calculating the GM and associated STV should not exceed 90 days. The duration is a component of a water quality criterion, and as such, would need to be explicitly included in the State's WQS. The recreational season may vary by location depending on the length of the beach season. Sampling of waterbodies should be representative of meteorological conditions (*e.g.,* wet and dry weather) for the recreational season.

Frequency: EPA recommends a frequency of zero exceedances of the GM and ≤ 25 percent exceedance of the STV, during the recreation duration specified. The frequency of exceedance is a component of a water quality criterion, and as such, would need to be explicitly included in State's water quality standard (WQS).

(b) Marine Criteria

Magnitude: Culturable enterococci at a GM of 35 cfu per 100 mL and an STV of 104 cfu per 100 mL measured using EPA Method 1600, or any other equivalent method that measures culturable enterococci.

Duration: For calculating the GM and associated STV, EPA recommends a duration between 30 days and 90 days. The duration for calculating the GM and associated STV should not exceed 90 days. The duration is a component of a water quality criterion, and as such, would need to be explicitly included in the State's WQS. The recreational season may vary by location depending on the length of the beach season. Sampling of waterbodies should be representative of meteorological conditions (*e.g.,* wet and dry weather) for the recreational season.

Frequency: EPA recommends a frequency of zero exceedances of the GM and ≤ 25 percent exceedance of the STV, during the recreation duration specified. The frequency of exceedance is a component of a water quality criterion, and as such, would need to be explicitly included in State's WQS.

EPA has also developed a quantitative polymerase chain reaction (qPCR) method to detect and quantify enterococci more rapidly than the culture method. For the purposes of beach monitoring, alternative site-specific criteria could be adopted into State standards measured by EPA's *Enterococcus* qPCR method A based on a site-specific performance characterization. For States interested in adopting a value for enterococci using EPA's *Enterococcus* qPCR method A into their WQS, EPA recommends a GM criterion of 475 calibrator cell equivalent (CCE) per 100 mL and an STV criterion of 1,000 CCE per 100 mL in freshwaters and marine waters based on its epidemiological study data.

Dated: December 15, 2011.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2011–32651 Filed 12–20–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Policy Statement Concerning Adjustments to the Insurance Premiums and Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statements; final approval.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation or FCSIC) announces that it has given final approval to a new Policy Statement Concerning Adjustments to the Insurance Premiums and a new Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts (AIRAs). These two policy statements, which were earlier published with a request for comments, reflect amendments to the Farm Credit Act of 1971 made by the Food, Conservation, and Energy Act of 2008, and other changed conditions. The policy statement concerning premiums maintains the Corporation's semiannual review process as a basis for the Corporation's exercise of its discretion to adjust premiums in response to changing conditions. The policy statement concerning the secure base amount and AIRAs maintains the Corporation's general approach to questions concerning the computation of the secure base amount and allocation and payment of Allocated Insurance Reserves Accounts, with modifications to reflect the legislation and the Corporation's recent AIRAs payments.

DATES: The Policy Statements are effective on December 8, 2011.

FOR FURTHER INFORMATION CONTACT: James M. Morris, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit System Insurance Corporation (FCSIC or Corporation) insures the timely payment of principal and interest on insured debt obligations issued by Farm Credit System banks under the Farm Credit Act of 1971, as amended (Act). The Corporation collects premiums from Farm Credit System (FCS) institutions to fund the Farm Credit Insurance Fund (Fund).

On March 23, 2007, the Corporation's Board of Directors (Board) adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia,* base premiums on the outstanding insured debt obligations instead of loans, and permit the Corporation to collect a broader range of premiums on insured debt. The legislative proposal reflected the Corporation's concern that, despite generally collecting premiums at the maximum statutory rates, the Fund was trending away from the ''secure base amount,'' the Corporation's target for the Fund. Provisions incorporating the Corporation's legislative proposal became a part of versions of proposed Farm Bills in the House and Senate. Ultimately, enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act) in 2008 amended the provisions of the Farm Credit Act of 1971 that govern FCSIC premiums to include the Corporation's proposed changes.

The Corporation took action to ensure that the amended provisions of the Act were implemented promptly and that there was a measured and structured transition to the new premium structure. In June 2008, the Corporation's Board of Directors took action to implement the amendments of the Act's premium provisions. The Board implemented (effective on July 1, 2008) the new premium rates and calculation method and adjusted the premiums pursuant to the Corporation's authority under section 5.55 of the Act, as amended by the FCE Act. The Corporation also took action to amend its long-standing regulations concerning premiums. *See* 12 CFR part 1410. The Corporation amended its regulations, effective June 9, 2009, to withdraw regulations that were inconsistent with the FCE Act and clarify the effect of the premium provisions of the Act as amended by the FCE Act. *See* 74 FR 28156 (June 15, 2009); 74 FR 17371 (April 15, 2009).[1]

On June 10, 2011, the Corporation's Board of Directors approved the publication of a revised draft Policy Statement Concerning Adjustments to the Insurance Premiums and a revised draft Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts (AIRAs) with a request for comments. The draft policy statements were published in the **Federal Register** on June 30, 2011. *See* 76 FR 38389 (June 30, 2011). The comment period ended on August 1, 2011. No comments were received.

The Corporation has now given final approval to the two policy statements without substantive changes. As revised, the Policy Statement Concerning Adjustments to the Insurance Premiums reflects the FCE Act amendments of the Farm Credit Act. However, the policy statement maintains the existing semiannual consideration of premium rates and the five policy factors that are contained in the present policy. In addition, the Corporation has now given final approval to the revised Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts. As revised, this policy statement reflects the FCE Act amendments of the Farm Credit Act that affect the secure base amount and Allocated Insurance Reserves Accounts and clarifies how the policy will apply under the new statutory provisions.

As amended, the Act's provisions assess premiums that are generally based on each bank's pro rata share of outstanding insured debt obligations (rather than on loans), aligning premiums with the obligations that FCSIC insures. The amendments reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the ''secure base amount.'' If the Farm Credit Insurance Fund is below the secure base amount (SBA), the amended Act requires that each insured Farm Credit System bank pay FCSIC the premium due from the bank, which shall be equal to (a) the adjusted average outstanding insured obligations multiplied by 0.0020; and (b) the average principal outstanding on loans in nonaccrual status and average amount outstanding of other than temporarily impaired investments multiplied by 0.0010; subject to FCSIC's power to reduce the premium in its sole discretion.

In addition to changes concerning premiums and the secure base amount, the FCE Act amended the Act to simplify provisions concerning allocation of amounts to AIRAs, and payment of amounts from AIRAs to accountholders. At year-end 2009, the Insurance Fund was $165.4 million above the SBA. This amount was allocated to the six Allocated Insurance Reserves Accounts. In January 2010, the Board of Directors authorized payment of $39.9 million from the AIRAs to the accountholders. This amount had been transferred into the AIRAs at year-end 2003. In March, the Board authorized the payment of the $165.4 million transferred into the AIRAs at year-end 2009 to the accountholders. During 2010, a total of $20.5 million was paid to the former Farm Credit System Financial Assistance Corporation (FAC) stockholders.

We note that the two policy statements now approved largely maintain the interpretations that the Corporation adopted when it approved its prior policy statements, with changes necessary to reflect the changes in the statute. Thus, much of the discussion contained in the **Federal Register** publication of the predecessor policy statement concerning adjustments in premiums, *see* 61 FR 16788, (April 17, 1996); 61 FR 39453 (July 29, 1996), and the **Federal Register** publication of the predecessor policy statement concerning AIRAs, *see* 65 FR 5340 (February 3, 2000); 63 FR 53423, (October 5, 1998), continues to apply.

The text of the ''Policy Statement Concerning Adjustments to the Insurance Premiums'' is set out below:

Farm Credit System Insurance Corporation Policy Statement Concerning Adjustments to the Insurance Premiums

Background

The Farm Credit Act of 1971, as amended (Act) established the Farm Credit System Insurance Corporation (FCSIC or Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit

[1] In 2009, the Corporation generally limited its amendments of its premium regulations to changes that were necessary in order to eliminate provisions that were obsolete or inconsistent with the FCE Act, and did not add new regulatory definitions. While two new terms, ''investment'' and ''other than temporarily impaired,'' were added by the FCE Act, the Corporation continues to believe that those terms can be interpreted as accounting terms. Definitions will be added if experience under the new statutory provisions and the regulations leads the Corporation to believe that those two terms, or other terms, should be defined.

System obligations.[2] Section 5.55 of the Act mandates that the Corporation build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and Federally guaranteed loans and investments) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound. The Farm Credit System Reform Act of 1996,[3] amended section 5.55 of the Act to establish in the Insurance Fund an Allocated Insurance Reserves Account (AIRA) for the benefit of each insured System bank and an AIRA for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; allocate any excess balances above the SBA to these AIRAs; and make partial distributions of the excess funds in the AIRAs. Congress, by enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act),[4] amended the provisions of the Act that govern FCSIC premiums, the SBA, and AIRAs to incorporate the Corporation's recommendations concerning calculation of premiums and the SBA, and the simplification of the provisions governing AIRAs. In 2009 the Corporation adopted final regulations implementing the amended provisions of the Act governing FCSIC premiums, the SBA and AIRAs.

Applicability

This policy statement will govern adjustments to premiums in response to changing conditions.

Policy Statement

The Corporation's Board of Directors (Board) will review the premium assessment schedule at least semiannually in order to determine whether to exercise its discretion to adjust the premium assessments in response to changing conditions. The Board may reduce the premiums when the Farm Credit System demonstrates good health and sound risk management and other conditions warrant, and raise premiums to the statutory level if, for example, the amount of insured obligations increases, or the Insurance Fund suffers a significant loss or if bank capital or collateral decreases significantly before the secure base amount is achieved.

As a basis for its decision the Board will consider the following:

1. The current level of the Insurance Fund and the amount of money and time needed to reach the secure base amount in light of potential growth;

2. The likelihood and probable amount of any losses to the Insurance Fund;

3. The overall condition of the Farm Credit System, including the level and quality of capital, earnings, asset growth, asset quality, loss allowance levels, asset liability management, as well as the collateral ratios of the five banks;

4. The health and prospects for the agricultural economy, including the potential impact of governmental farm policy and the effect of the globalization of agriculture on opportunities and competition for U.S. producers; and

5. The risks in the financial environment that may cause a problem, even when there is no imminent threat, such as volatility in the level of interest rates, the use of sophisticated investment securities and derivative instruments, and increasing competition from non-System financial institutions.

In its review of the premium assessments, the Board will consider multiple scenarios that reflect the impact of potential growth in Farm Credit System debt levels on the time required to achieve the secure base amount. The secure base amount should be achieved while the Farm Credit System is in good health with very few problem institutions. Thus, the premium on adjusted average outstanding insured obligations will be set between zero and the statutory rate of 20 basis points. The Board will not reduce the 10 basis points premium on the average principal outstanding on loans in nonaccrual status and the average amount outstanding of other than temporarily impaired investments, to continue providing an incentive for sound credit extension and administration and sound investment policy.

The text of the ''Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts'' is set out below:

Farm Credit System Insurance Corporation Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts

Background

The Farm Credit Act of 1971, as amended (Act) established the Farm Credit System Insurance Corporation (FCSIC or Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations.[5] Section 5.55 of the Act mandates that the Corporation build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and Federally guaranteed loans and investments) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound. The Farm Credit System Reform Act of 1996,[6] amended section 5.55 of the Act to establish in the Insurance Fund an Allocated Insurance Reserves Account (AIRA) for the benefit of each insured System bank and an AIRA for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; allocate any excess balances above the SBA to these AIRAs; and make partial distributions of the excess funds in the AIRAs. Congress, by enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act),[7] amended the provisions of the Act that govern FCSIC premiums, the SBA, and AIRAs to incorporate the Corporation's recommendations concerning calculation of premiums and the SBA, and the simplification of the provisions governing AIRAs. In 2009, the Corporation adopted final regulations implementing the amended provisions of the Act governing FCSIC premiums, the SBA and AIRAs.

Applicability

This policy statement will govern the calculation of the secure base amount, the determination of any excess above the SBA, the method for allocating any excess to the AIRAs, and the method for making payments from the AIRAs to accountholders.

Policy Statement

I. Secure Base Amount Determination

As stated in the Corporation's Policy Statement Concerning Adjustments to the Insurance Premiums, the Corporation's Board of Directors (Board) will review the premium assessments at least semiannually to determine whether to adjust premiums in response to changing conditions. The Board

[2] The Agricultural Credit Act of 1987, Public Law 100–233 (1988), amended the Farm Credit Act of 1971 to establish the Farm Credit System Insurance Corporation. (12 U.S.C. 2277a–1 *et seq.*)

[3] Public Law 104–105, 110 Stat. 162 (1996).

[4] Public Law 110–234, Public Law 110–246, 122 Stat. 1651 (2008).

[5] The Agricultural Credit Act of 1987, Public Law 100–233 (1988), amended the Farm Credit Act of 1971 to establish the Farm Credit System Insurance Corporation. (12 U.S.C. 2277a–1 *et seq.*)

[6] Public Law 104–105, 110 Stat. 162 (1996).

[7] Public Law 110–234, Public Law 110–246, 122 Stat. 1651 (2008).

continues to engage in this review even after the Insurance Fund achieves the SBA because the law requires the Corporation to maintain the SBA. Thus, the Corporation must ensure that as the Farm Credit System's insured debt grows, or if the Insurance Fund suffers a significant loss, the Insurance Fund builds back to the SBA.

The Farm Credit System Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. On March 23, 2007, the Corporation's Board of Directors adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia,* base premiums on the outstanding insured debt obligations instead of loans, permit the Corporation to collect a broader range of premiums on insured debt, and simplify the provisions concerning allocation of funds to the AIRAs and the payment of funds from the AIRAs to accountholders. Ultimately, enactment of the FCE Act in 2008 amended the provisions of the Farm Credit Act of 1971 that govern FCSIC premiums to include the Corporation's proposed changes.

As amended, the Act's provisions also reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the secure base amount. The amendments also simplified the method of paying out AIRAs, prescribing that, if the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount at the end of any calendar year, the Corporation shall allocate to the AIRAs the excess amount less the amount that the Corporation, in its sole discretion, maintains for estimated operating expenses and estimated insurance obligations of the Corporation for the following calendar year.

To begin the process, the Corporation must define the aggregate outstanding insured obligations of all the System banks. Then it must follow the steps in the statute to determine the SBA. Finally, at the end of any calendar year in which the Insurance Fund attains the secure base amount, the Corporation must determine whether any excess funds exist for allocation to the AIRAs.

The principal calculation for determining whether the Insurance Fund is at the SBA amount will be 2 percent of the aggregate adjusted insured obligations defined as follows:

(1) ''Insured obligation'' means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on or before January 5, 1989, on behalf of any System bank; and after such date which, when issued, is issued on behalf of any insured System bank and is outstanding at the quarter-end. The balance outstanding at the quarter-end shall include principal and accrued interest payable as reported by the banks in the call reports submitted to the Farm Credit Administration.

(2) The aggregate outstanding insured obligations of all insured System banks determined under paragraph (1) of Section I shall be adjusted downward to exclude an amount equal to the sum of (as determined by the Corporation):

(A) Ninety (90) percent of each of

(i) The guaranteed portions of principal outstanding on Federal government-guaranteed loans in accrual status made by the banks; and

(ii) The guaranteed portions of the amount of Federal government-guaranteed investments made by the banks that are not permanently impaired; and

(B) Eighty (80) percent of each of

(i) The guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by the banks; and

(ii) The guaranteed portions of the amount of State government-guaranteed investments made by the banks that are not permanently impaired.

For the purpose of this paragraph (2), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on

(a) All loans or investments made by any production credit association, or any other association making direct loans under authority provided under section 7.6 of the Act, that is able to make such loans or investments because such association is receiving, or has received, funds provided through the insured System bank;

(b) All loans or investments made by any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act, that is able to make such loans or investments because such entity is receiving, or has received, funds provided through the insured System bank; and

(c) All loans or investments made by such insured System bank (other than loans made to any party described in paragraph (a) or (b)).

At the end of any calendar year when the Insurance Fund balance exceeds the SBA, calculated using December 31, balances, the Corporation will determine whether any excess funds exist for allocation to the AIRAs.

II. Allocated Insurance Reserves Accounts

Determination of Excess Insurance Fund Balances

An AIRA shall be established in the Insurance Fund for each insured System bank and for FAC stockholders. Amounts representing excess Insurance Fund balances will be allocated to the AIRAs. The AIRAs remain a part of the Insurance Fund and are available to the Corporation.

(a) Authorized Deductions

If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall allocate to the AIRAs the excess amount less the amount that the Corporation, in its sole discretion, determines to be the sum of the estimated operating expenses and estimated insurance obligations of the Corporation for the immediately succeeding calendar year. The Corporation will budget for the next calendar year operating expenses and it will deduct the operating expenses it expects to incur. When determining estimated insurance obligations, the Corporation will include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund.

The excess Fund balance shall be allocated to the accounts of each insured System bank and to the FAC stockholders. The AIRA balances will be fixed at year-end until paid to account holders or used under paragraph (c). The Act provides that, not later than 60 days after receipt of a payment from the AIRAs established for the insured System banks, each insured System bank, in consultation with affiliated associations of the insured System bank, and taking into account the direct or indirect payment of insurance premiums by the associations, shall develop and implement an equitable plan to distribute payments received among the bank and associations of the bank. The Corporation will request that each insured System bank promptly transmit to the Corporation a copy of the plan that the institution develops for the distribution of such AIRA payments.[8]

[8] *See,* Act, section 5.55(e)(6)(D), 12 U.S.C. 2277a–4(e)(6)(D).

(b) Allocation Formula When Excess Funds Are Available

(1) Ten (10) percent of the excess Insurance Fund balance shall be credited to the AIRAs for all holders, in the aggregate, of FAC stock. The total amount that may be allocated to this AIRA is limited to $35.5 million ($56 million less the $20.5 million that was paid out in 2010).

(2) The remaining amount of the excess Insurance Fund balance shall be credited to the AIRA for each insured System bank. There shall be credited to the AIRA of each insured system bank an amount that bears the same ratio to the total amount (less any amount credited under paragraph (b)(1) of this Section II) as—

(i) The average principal outstanding for the calendar year on insured obligations issued by the bank (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in paragraph (2) of Section I above); bears to

(ii) The average principal outstanding for the calendar year on insured obligations issued by all insured System banks (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in paragraph (2) of Section I above).

(3) An example of the allocation formula is shown in the attached Exhibit 1.

(c) Use of Funds in AIRAs When Reductions Are Required

To the extent that the sum of the operating expenses of the Corporation and the insurance obligations of the Corporation for a calendar year exceeds the sum of operating expenses and insurance obligations determined under paragraph (a) of this Section II for the calendar year, the Corporation shall cover the expenses and obligations by reducing each AIRA by the same proportion, and expending the amounts so obtained before expending other amounts in the Fund.

When the Corporation's actual operating expenses and insurance obligations exceed the estimated amounts used to determine any year's AIRA balances, the Act requires AIRA balances to absorb such excess expenses before using other amounts in the Insurance Fund.[9] To the extent reductions are made in AIRA balances to absorb Corporation expenses and actual insurance obligations, each AIRA will be reduced by its proportional amount in accordance with the statute. The same formula used to make allocations of excess Insurance Fund balances shall be used to reduce AIRA balances when necessary. Ten (10) percent of any necessary AIRA reduction will be applied to the FAC stockholder AIRA. The remaining 90 percent will be applied to the System insured banks' AIRAs on the basis of the ratio of described in paragraph (b)(2) of this Section II.

[9] *See,* Act, section 5.55(e)(5), 12 U.S.C. 2277a–4(e)(5).

Insurance Fund Balance @ 12/31/2009 (including $39,888,432 allocated to AIRAs in 2003)	$	3,287,696,411
Less: FCSIC's Prospective Operating Expenses for 2010	$	(3,863,892)
Insurance Fund Balance for Calculation of AIRAs	$	3,283,832,519
Less: Secure Base Amount at 12/31/2009	$	(3,078,512,000)
Excess Insurance Fund Balance	$	205,320,519
Less: Amount Allocated to AIRAs in 2003	$	(39,888,432)
Amount Allocated to AIRAs in 2009	$	165,432,087

Apportionment of Amount Allocated to AIRAs in 2009	$	165,432,087
FAC Stockholders in aggregate (10% of Allocable Amount) - Apportioned Based on Number of Shares Held (see page 2 of example for details)	**$**	**16,543,209**
Banks (90% of Allocable Amount) - Apportioned Based on Average Adjusted Debt Outstanding	**$**	**148,888,878**

Bank Apportionment

	Percentage		Amount Allocated
AgFirst FCB	14.87%	$	22,141,337
AgriBank, FCB	36.30%	$	54,044,812
U.S. AgBank, FCB	13.61%	$	20,260,392
FCB of Texas	7.47%	$	11,121,022
CoBank, ACB	27.75%	$	41,321,315
Total	100%	$	148,888,878

FAC Shareholders Balances		Shares Outstanding	Percentage	Adjusted Shares Retired [1]	Amount Paid to FAC Stockholders [2] Payment 1	Shares Remaining After Payment 1	Percentage	Adjusted Shares Retired [1] Approved Mar 2010	Amount Paid to FAC Stockholders [2] Payment 2	Shares Remaining After Payment 2
FCB of Texas		**2,487,975**	**22.28%**	**177,727**	**$ 888,635.00**	**2,310,248**	**22.00%**	**727,901**	**$ 3,639,506**	**1,582,347**
AgriBank, FCB		**2,812,507**	**25.18%**	**200,910**	**$ 1,004,550.00**	**2,611,597**	**25.00%**	**827,160**	**$ 4,135,802**	**1,784,437**
CoBank		**712,660**	**6.38%**	**50,909**	**$ 254,545.00**	**661,751**	**6.00%**	**198,519**	**$ 992,593**	**463,232**
U.S. AgBank		**1,727,833**	**15.47%**	**123,427**	**$ 617,135.00**	**1,604,406**	**16.00%**	**529,383**	**$ 2,646,913**	**1,075,023**
AgFirst Associations (Total)		**3,426,889**	**30.69%**	**244,806**	**$ 1,224,030.00**	**3,182,083**	**31.00%**	**1,025,679**	**$ 5,128,395**	**2,156,404**
	MidAtlantic	770,209	22.48%	55,020	$ 275,100.00	715,189	22.48%	230,526	$ 1,152,630	484,663
	FC of the Virginias	571,525	16.68%	40,827	$ 204,135.00	530,698	16.68%	171,059	$ 855,296	359,639
	Colonial Farm Credit	448,912	13.10%	32,068	$ 160,340.00	416,844	13.10%	134,361	$ 671,804	282,483
	Chattanooga	257,737	7.52%	18,412	$ 92,060.00	239,325	7.52%	77,142	$ 385,708	162,183
	Puerto Rico Farm Credit	243,042	7.09%	17,362	$ 86,810.00	225,680	7.09%	72,743	$ 363,716	152,937
	Jackson Purchase	221,845	6.47%	15,848	$ 79,240.00	205,997	6.47%	66,399	$ 331,995	139,598
	AgChoice Farm Credit	210,042	6.13%	15,005	$ 75,025.00	195,037	6.13%	62,866	$ 314,331	132,171
	Central Kentucky	201,347	5.88%	14,384	$ 71,920.00	186,963	5.88%	60,264	$ 301,319	126,699
	AgGeorgia Farm Credit	106,773	3.12%	7,628	$ 38,140.00	99,145	3.12%	31,958	$ 159,788	67,187
	Ag Credit	97,918	2.86%	6,995	$ 34,975.00	90,923	2.86%	29,307	$ 146,536	61,616
	AgCarolina	94,692	2.76%	6,765	$ 33,825.00	87,927	2.76%	28,342	$ 141,708	59,585
	Carolina Farm Credit	83,163	2.43%	5,941	$ 29,705.00	77,222	2.43%	24,891	$ 124,455	52,331
	AgSouth Farm Credit	77,850	2.27%	5,562	$ 27,810.00	72,288	2.27%	23,301	$ 116,504	48,987
	ArborOne	41,834	1.22%	2,989	$ 14,945.00	38,845	1.22%	12,521	$ 62,605	26,324
FAC Stockholder Totals		**11,167,864**		**797,779**	**$ 3,988,895.00**	**10,370,085**		**3,308,642**	**$ 16,543,209**	**7,061,443**
	[1]The number of shares retired has been rounded upwards to the next full $5 par value share.									
	[2]The amount paid to FAC shareholders has been increased to allow for the retirement of full shares.									
	Payment 1 was authorized by the FCSIC Board in January 2010. Payment 2 was authorized in March 2010.									

Each of the revised policy statements has been approved by the Board of Directors of the Corporation. They are effective upon the date of the Board of Directors' action.

Dated: December 15, 2011.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2011–32723 Filed 12–20–11; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From December 13, 2011 Open Meeting

December 12, 2011.

The following item has been deleted from the list of Agenda items scheduled for consideration at the Tuesday, December 13, 2011, Open Meeting and previously listed in the Commission's Notice of December 6, 2011. This item has been adopted by the Commission.

Item No.	Bureau	Subject
2	International	*Title:* Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services (IB Docket No. 09–16) and Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services (IB Docket No. 10–99) *Summary:* The Commission will consider the Third Report to the U.S. Congress on the status of competition in domestic and international satellite communications services as required by Section 703 of the Communications Satellite Act of 1962, as amended. The Report covers calendar years 2008, 2009 and 2010.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–32787 Filed 12–19–11; 4:15 pm]

BILLING CODE 6712–01–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 the 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 the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011953–011.

Title: Florida Shipowners Group Agreement.

Parties: The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment revises the way the parties may change the formula for assessment of expenses and removes Florida-Bahamas Shipowners and Operators Agreement as a party effective December 31, 2011.

Agreement No.: 011960–007.

Title: The New World Alliance Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd. (''MOL'').

Filing Parties: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, 555 West Fifth Street, 46th Floor, Los Angeles, CA 90013; Eric Jeffrey, Esq., Goodwin Proctor LLP, 901 New York Ave. NW., Washington, DC 20001; and David F. Smith, Esq., Cozen O'Connor, 1627 I Street NW., Washington, DC 20006.

Synopsis: The amendment removes historical references to sub-charters previously contained in the agreement and amends the agreement to authorize sub-charters based solely on the written consent of the other parties.

Dated: December 16, 12011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–32633 Filed 12–20–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Notice is hereby given of the final approval of four proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Jennifer Williams, Senior Financial Services Analyst (202) 452–2446, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551, for FR 3063a or b (government-administered, general-use prepaid cards).

Edith Collis, Senior Financial Services Analyst (202) 452–3638, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551, for FR 3064a (debit card issuers).

Linda Healey, Senior Financial Services Analyst (202) 452–5274, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551, for FR 3064b (payment card networks).

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829 Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the implementation of the following information collections:

1. *Report title:* Government-administered, General-use Prepaid Card Surveys.[1]

Agency form number: FR 3063a and FR 3063b.

OMB control number: 7100—to be assigned.

Frequency: Annual.

Reporters: Issuers of government-administered, general-use prepaid cards (FR 3063a) and governments that administer general-use prepaid cards (FR 3063b).

Estimated annual reporting hours: FR 3063a: 1,000 hours; FR 3063b: 900 hours.

Estimated average hours per response: FR 3063a: 50 hours; FR 3063b: 15 hours.

Number of respondents: FR 3063a: 20; FR 3063b: 60.

General description of report: These information collections are authorized by section 920(a) of the Electronic Fund Transfer Act (EFTA), which was added by section 1075(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). 15 U.S.C. 1693o–2. EFTA Section 920(a) requires the Board to submit an annual report to the Congress on the prevalence of the use of general-use prepaid cards in federal, state, and local government-administered payment programs, and the interchange transaction fees and card-holder fees charged with respect to the use of such general-use prepaid cards. 15 U.S.C. 1693o–2(a)(7)(D). EFTA Section 920(a) also provides the Board with authority to require issuers to provide information to enable the Board to carry out the provisions of EFTA Section 920(a). 15 U.S.C. 1693o–2(a)(3)(B).

The obligation of issuers to respond to the issuer survey (FR 3063a) is mandatory. Some of the data collected by FR 3063a may be kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA), which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Information collected under FR 3063a can be kept confidential under exemption (b)(4) if the release of data would cause substantial harm to the competitive position of the issuer.

The obligation of government agencies to respond to the government survey (FR 3063b) is voluntary. The Board anticipates that all of the information collected by FR 3063b will be publicly available and would not be given confidential treatment.

Abstract: Section 920 of the EFTA provides that the Board shall provide annually a report to the Congress regarding the prevalence of the use of general-use prepaid cards in federal, state, and local government-administered payment programs, and the interchange and cardholder fees charged with respect to this use. Section 920(a) also provides the Board with authority to require card issuers to respond to information requests as may be necessary to carry out the provisions of the section.

Current Actions: On September 6, 2011, the Board approved a proposal to seek comment on these surveys. Notice of the proposed action was published in the **Federal Register** on September 15, 2011; the comment period ended on November 14, 2011.[2] The Board received eleven comments in total addressing the proposed information collections. The comments are summarized and addressed below.

2. *Report title:* Interchange Transaction Fees Surveys.[3]

Agency form number: FR 3064a and FR 3064b.

OMB control number: 7100—to be assigned.

Frequency: FR 3064a—Biennial; FR 3064b—Annual.

Reporters: Issuers of debit cards (FR 3064a) and payment card networks (FR 3064b).

Estimated annual reporting hours: FR 3064a: 92,800 hours; FR 3064b: 1,275 hours.

Estimated average hours per response: FR 3064a: 160 hours; FR 3064b: 75 hours.

Number of respondents: FR 3064a: 580; FR 3064b: 17.

General description of report: These information collections are authorized by section 920(a) of the EFTA, which was added by section 1075(a) of the Dodd-Frank Act. 15 U.S.C. 1693o–2. This section requires the Board to disclose aggregate or summary information concerning the costs incurred and interchange transactions fees charged or received, by issuers or payment card networks in connection with the authorization, clearance, or settlement of electronic debit transactions as the Board considers appropriate and in the public interest. 15 U.S.C. 1693o–2(a)(3)(B). It also provides the Board with authority to require issuers (or agents of issuers) and payment card networks to provide information to enable the Board to carry out the provisions of the section.

The obligation to respond to these surveys is mandatory. In accordance with the statutory requirement, the Board will release aggregate or summary information from the survey responses. Some of the data collected by the surveys may be kept confidential under exemption (b)(4) of the FOIA, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. § 552(b)(4). Information collected under the surveys can be kept confidential under exemption (b)(4) if the release of data would cause substantial harm to the competitive position of the respondent.

Abstract: Section 920(a)(3) of the EFTA provides that the Board shall at least on a biennial basis disclose aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with debit card transactions. 15 U.S.C. 1693o–2(a)(3)(B). When the Board adopted Regulation II setting debit card interchange fee standards, the Board's rulemaking stated that information would be gathered from payment card networks annually regarding interchange fees that are received by covered and exempt issuers.[4]

Current Actions: On September 6, 2011, the Board approved a proposal to seek comment on these surveys. Notice of the proposed action was published in the **Federal Register** on September 15, 2011; the comment period ended on November 14, 2011.[5] The Board

[1] The issuer and government surveys, supporting statement, and other documentation are available on the Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

[2] 76 FR 57037.

[3] The debit card issuer and payment card network surveys, supporting statement, and other documentation are available on the Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

[4] Regulation II—Debit Card Interchange Fees and Routing (76 FR 43394 (July 20, 2011)).

[5] 76 FR 57037.

received eleven comments in total addressing the proposed information collections. The comments are summarized and addressed below.

Summary Discussion of Public Comments and Responses

The Board received comments from three financial institutions, two banking industry trade associations, a joint letter from eight banking industry associations (including the two associations that responded separately), three payment card networks, one merchant, and one merchant trade association. Some of the commenters' responses were applicable to all four surveys. These comments addressed the clarity of the instructions for the survey instruments, the confidentiality of survey data, the follow-up process, and the survey timeframes.

Most commenters stated that certain aspects of the survey instructions lacked sufficient clarity to allow for consistent responses and meaningful aggregation. For example, for the proposed debit card issuer survey (FR 3064a), three commenters stated that more precise definitions and examples were needed to determine what costs were included and excluded from ''authorization, clearance, and settlement costs.'' In a few instances, the commenters provided examples of how to improve the clarity and precision of the data requested or definitions provided. The Board has taken steps to address the specific examples cited and has provided improved and expanded instructions, definitions, and examples throughout the surveys.

Two commenters expressed concern regarding the confidentiality of survey data stating that, if released, individual issuer and payment card information collected through these surveys would cause substantial harm to the competitive position of the survey respondent. As proposed, the Board will report all of the survey data on an aggregate or summary basis. Individual institution data would be exempt from disclosure under exemption (b)(4) of the FOIA, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4).

Several commenters requested that the Board provide a follow-up process between the survey respondents and the Board improve the quality of the data received and increase the consistency of responses. One commenter cited the need for a formal approach to answering respondent questions and conducting follow-up interviews with respondents after survey responses are submitted. Three commenters stated the need for a post-survey reconciliation process to understand better potential inconsistencies across responses. The Board concurs with these comments and has decided to take the following steps. Each survey provides contact information for the Board to answer respondent questions during the completion period. The Board, as appropriate, may use that correspondence to create frequently asked questions (FAQs). The Board will also compare responses for completeness and consistency and, as needed, follow up with respondents to reconcile responses that seem inconsistent or in error.

Several commenters responded to the Board's request for comment on whether the proposed timeframes for submission allow sufficient time for respondents to complete the surveys. Five commenters recommended all four surveys be administered simultaneously in mid-February with a 60-day completion period to allow ample time for internal review before the surveys are submitted to the Board.[6] The Board has decided to adopt this approach for three of the four surveys: the debit card issuer survey (FR 3064a), and both government-administered prepaid card surveys (FR 3063a and b). Because the payment card network survey (FR 3064b) contains information necessary to evaluate the effectiveness of the small issuer exemption in Regulation II and assist small issuers in selecting payment card networks, the Board is targeting spring 2012 for publishing the payment card network survey results.[7] To meet this schedule for the release of payment card network data, the Board will release the payment card network survey to respondents in early February 2012. The Board has decided to extend the completion period from the proposed 30 days to 45 days.[8]

The subsequent sections of this notice address additional comments on and proposed modifications to specific surveys. In addition, over time, the Board will continue to clarify the surveys as appropriate.

Detailed Discussion of Public Comments and Response

Government-Administered, General-Use Prepaid Card Issuer Survey (FR 3063a)

General Comments

The Board received several overarching comments on the government-administered, general-use prepaid card issuer survey. One commenter suggested that information be collected with respect to costs associated with government-administered payment programs. Section 920(a)(7)(D) of the EFTA directs the Board to report to the Congress on the prevalence of the use of general-use prepaid cards in federal, state, and local government-administered payment programs and the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards. Therefore, the Board believes that the collection of data regarding issuer costs is outside the scope of information required to be reported to the Congress and has decided not to expand the survey to include such costs.

Two commenters asserted that providing individual responses for individual government programs, particularly smaller programs, would be a significant burden for issuers because individual programs may not be separated on issuers' internal systems. For example, one commenter asserted that issuers may settle government-program transactions on a consolidated basis and may not know the individual fees associated with individual cards because they do not know the terms of the contractual relationship between the government entity and the third-party administrator. Therefore, in order to respond to certain portions of the survey, the issuer would have to obtain the responsive data from either the third-party administrator or the government entity for which it is issuing cards. Further, with respect to smaller programs, one of these two commenters suggested that the Board mitigate this burden by creating a *de minimis* threshold for reporting. The Board considered this suggestion but has decided not to establish such a threshold because such information would be useful in providing an overview of the prevalence of general-use prepaid cards among different programs. The Board recognizes that issuers may not be able to report information at an individual program level. Nevertheless, the Board will

[6] The Board proposed to distribute the payment card network survey by mid-January 2012 and the debit card issuer survey and both government-administered prepaid card surveys by mid-February 2012.

[7] In announcing the final rule, the Board committed to publish annually on its Web site information regarding the average interchange fees received by exempt issuers and covered issuers in each payment card network; this information may assist exempt issuers in determining the networks in which they wish to participate. The Board did not commit to a timeframe for publishing this information.

[8] Future surveys will be made available to respondents by early February of the respective years and would request return of the payment card network survey within 45 days and the other three surveys within 60 days.

require issuers to report at the individual program level to the extent issuers are able to do so. In addition, the Board will reach out to individual government agencies, as needed, to help facilitate the release of program-specific information on a voluntary basis.

Lastly, the Board specifically requested comment on whether there are issuers that are not depository institutions, and if so, whether the depository institution holding the insured deposits underlying the cards should be required to report on behalf of those issuers. The Board received no responses to this request. The Board has decided to implement the planned respondent list as proposed but will survey non-depository institution issuers of government-administered, general-use prepaid cards if and when any are identified.

Section-by-Section analysis

I. Respondent Information

The Board proposed to have respondents provide the name of the card issuer covered in the response as well as the contact person(s) name, survey section for which they are responsible, email, and phone number. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

II. Card Program Information

The Board proposed to have respondents report summary information on card programs covered in the response, whether the response covers federal, state, or local programs, jurisdiction, sponsoring government agency/agencies, a description of payment type, recipients receiving payments on prepaid cards, and recipients receiving payments by all payment methods.[9] One commenter suggested requiring reporting by state rather than by card program. The Board believes that reporting data by card program is more consistent with the requirements of the EFTA. To the extent possible, issuers are to report at the individual program level. If unable to report program-level information, respondents should report aggregate program information.

In addition, the Board specifically requested comment on the ability of issuers to provide the total number of recipients receiving payments, regardless of payment method. One commenter asserted that issuers are often not in the best position to provide data on the different payment methods used to disburse benefits under a particular government-administered payment program. The Board considered this comment and concluded that questions requesting data on the total number of recipients in a government-administered program will be excluded from the survey. These data may be best obtained from the government entity administering the particular payment program.

Another commenter suggested that the Board provide a method for specifying how government-administered payment programs count recipients, such as households or individuals. The Board agrees that given the varying nature of government-administered payment programs (for instance, unemployment assistance, the Supplemental Nutrition Assistance Program (SNAP), and other miscellaneous programs), it is appropriate to expand the survey to allow respondents to specify the method by which they count recipients.[10] Thus, the Board has decided to amend the survey as suggested.

III. Government-Administered Prepaid Cards

The Board proposed to have respondents report summary information on the number of cards outstanding, and the allocation of cards outstanding between cards that can be used on both dual-message (signature) and single-message (PIN) networks, cards that can be used on dual-message (signature) networks, and cards that can be used on single-message (PIN) networks. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

IV. Funding

The Board proposed to have respondents report the value of funds loaded into prepaid card accounts, funds outstanding on prepaid card accounts, and all funds paid by all payment methods. The Board specifically requested comment on whether any funding patterns during the month may change significantly an issuer's response depending on the as-of date requested (*e.g.,* the end of the month as proposed). The Board received no comments on this question and only one comment on the section related to all funds paid by all payment methods, which is discussed earlier in Section II. The Board will implement the section as proposed except with conforming changes to address this comment and other clarifying changes as appropriate.

V. ATM Transactions

The Board proposed to have respondents report summary information on the number of cards outstanding at year-end that can be used to make ATM cash withdrawals, the volume and value of ATM cash withdrawals, and the ATM fees charged for withdrawals by ATM operators at nonproprietary ATMs. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

VI. Purchase Transactions

The Board proposed to have respondents report summary information on the volume and value of settled purchase transactions and the volume and value of settled purchase transactions by authentication method. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

VII. Interchange Fees

The Board proposed to have respondents report interchange fee revenues received on settled purchase transactions and the allocation of the interchange fee revenues received on settled purchase transactions for dual-message (signature) transactions and single-message (PIN) transactions. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

VIII. Fees Paid by Issuers

The Board proposed to have respondents report the fees paid on ATM cash withdrawals and the fees paid on over-the-counter at-bank (teller) cash withdrawals. The Board specifically requested comment on whether fees paid for over-the-counter at-bank (teller) cash withdrawals should be included in the survey. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

[9] Jurisdiction refers to the geographic area in which government-administered, general-use prepaid cards have been issued (*i.e.,* nationally, particular state(s), county/counties, municipality/municipalities).

[10] Sections 1075(b)–(d) of the Dodd-Frank Act amended the Food and Nutrition Act of 2008, the Farm Security and Rural Investment Act of 2002, and the Child Nutrition Act of 1966 to specify that EFTA Section 920 does not apply to certain electronic benefit transfer or other reimbursement systems under those acts. The Board believes that the government programs under those acts use general-use prepaid cards that are relevant to the report to the Congress required under Section 920(a)(7)(D). The Board will expand the survey to collect this information.

IX. Revenues From Cardholder Fees

The Board proposed to have respondents report total revenues received on all fees charged to cardholders and the allocation of all fees charged to cardholders between routine purchase transaction fees, monthly fees, balance inquiry fees, ATM fees, over-the-counter at-bank (teller) fees, account servicing fees, penalty fees, and all other fees. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

X. Fees Assessed to Cardholders

The Board proposed to have respondents provide summary information on fees assessed to cardholders, including routine purchase transaction fees, monthly fees, balance inquiry fees, ATM fees charged to cardholders, over-the-counter at-bank (teller) fees, account servicing fees, penalty fees, and all other fees. One commenter was concerned that requesting a ''minimum transaction fee'' and a ''maximum transaction fee'' in dollars would create ambiguity as to how issuers should respond in this section. The commenter suggested that additional clarity was needed to understand whether respondents should report at the program level or at the transaction level. The commenter also recommended the Board provide additional guidance on how to respond with regard to minimum and maximum transaction fees for programs with differing fee structures. Another commenter suggested that government-imposed requirements with regard to fees would likely skew the results of the survey. The Board has decided to expand the section to allow respondents to provide an explanation of fees assessed to cardholders and add questions requesting information about government-imposed fee requirements.

Government-Administered, General-Use Prepaid Card Government Survey (FR 3063b)

The Board proposed to have respondents provide respondent information, program information, the number of cards, and the value of funding. The Board received no comments on this survey. The FR 3063b survey will be implemented as proposed with clarifying changes as appropriate.

Interchange Transaction Fees Surveys (FR 3064a and b)

General Comments

The Board asked specific questions and commenters provided several comments that were relevant to both the debit card issuer survey (FR 3064a) and the payment card network survey (FR 3064b). These topics included removing the questions requesting data on incentive payments paid by networks to issuers, the use of the terms ''single-message'' and ''dual-message'' versus ''signature'' and ''PIN,'' whether to include general-use prepaid card data with signature and PIN transactions or request prepaid card data separately, and the reporting burden to complete the survey.

Most commenters stated that the surveys should not collect information on payments and incentives paid by networks to issuers. Commenters believed that the instructions were too vague and the information requested was too institution-specific to allow for valid aggregation of data. In addition, commenters believed that reporting even aggregated data would compromise confidentiality. Further, commenters believed that the enforcement of possible circumvention or evasion regarding Regulation II was within the purview of the regulators given supervisory authority over the specific institutions. Thus, the commenters considered a more productive approach would be to include this information in the context of an individual bank examination rather than a more general survey. The Board understands the issues raised for individual institutions, but believes this information collected at the network level would provide useful context to the data collected on network fees assessed on issuers and acquirers. To address commenter concerns, the Board will not request in the debit card issuer survey (FR 3064a) information on payments and incentives received from networks. However, information on payments and incentives will be included on the payment card network survey (FR 3064b), but in less detail than originally proposed. Specifically, network respondents will be asked to allocate payments and incentives paid to acquirers and merchants and those paid to issuers, but not based on the type of incentives.

In addition, in response to the Board's request for comment on the best terms to use in identifying types of authentication mechanisms (single-message and dual-message versus PIN and signature), two commenters responded that the PIN and signature terminology is sufficient for the surveys because these terms are generally understood in the industry. The Board considered these comments, however, for clarity purposes has decided to retain the single- and dual-message terminology and the PIN and signature terminology in the surveys as proposed.

The Board requested comment on whether issuers should report general-use prepaid card data combined with other transaction data related to single- or dual-message systems (and if so, whether they would be able to do so) or should report general-use prepaid card activity separately. Three commenters stated that general-use prepaid card information should be reported separately because the commenters also believed there were significant enough differences in authorization, clearance, and settlement costs between the programs to support gathering the data separately. The commenters stated that prepaid card programs are usually separate from debit card programs within an issuer's organization and so reporting them separately would not impose a significant burden. The Board believes that separately reporting data will provide more accurate reporting of costs associated with the authorization, clearance, and settlement of both debit cards and prepaid cards. Thus, the Board has decided to add a new section (Section V) to the debit card issuer survey (FR 3064a) for the collection of data similar to Section II for general-use prepaid cards. A similar question was asked in regard to the payment card network survey (FR 3064b), however, the Board did not receive any comments and will implement the payment card network survey as proposed.

Three commenters noted that their estimates of the time required to complete the surveys were longer than the Board's estimate of 80 hours, on average, for the debit card issuer survey and 25 hours, on average, for the payment card network survey. Based on the estimates received from commenters, the Board has decided to increase the estimate for the debit card issuer survey (FR 3064a) to 160 hours, and the estimate for the payment card network survey (FR 3064b) to 75 hours.

Debit Card Issuer Survey (FR 3064a)

Section-by-Section Analysis

I. Respondent Information

The Board proposed to ask respondents to provide the name of the entity covered in the response and the contact person(s) name, section of the survey for which they are responsible, email, and phone number. Respondents also would report whether general-use prepaid cards are issued.

The Board requested specific comment regarding the feasibility of requiring each chartered entity that issues debit cards to complete a separate survey rather than completing one survey for all chartered entities in the bank holding company. One commenter

responded that reporting at the charter level was feasible and appropriate. Two other commenters, however, stated that the process would be more efficient and less burdensome to report at the bank holding company level. The Board considered these comments and has decided to collect these data at the bank holding company level to help reduce respondent burden. The Board, however, will allow issuers to respond at the charter level.

The Board also received several comments suggesting that the Board survey parties other than large issuers and payment card networks, as proposed. Four commenters suggested that exempt issuers (those with less than $10 billion in assets) should be allowed to participate voluntarily in the issuer survey because they believe that the capped debit card interchange rate will ultimately become the default rate for all card issuers.[11] Two commenters stated that the Board should survey merchants on fraud losses, fraud prevention, and data security to ensure that the costs of fraud and fraud prevention to all parties were accounted for and calculated. The Board believes that most exempt issuers and merchants would find it burdensome to complete the survey. In addition, comparisons of survey results from mandatory and voluntary respondents could be misleading because voluntary participants may not represent fully the broad population of small issuers and merchants. Further, there are other channels, such as certain questions contained in the payment card network survey (FR 3064b), to provide information on the effect of Regulation II on small issuers.

II. All Debit Card Transactions (Including General-Use Prepaid Card Transactions)

The Board proposed to ask respondents to report summary information for debit card (including general-use prepaid card) transaction volume and value, chargebacks to acquirers, costs of authorization, clearance, and settlement, payments and incentives paid by networks to issuers, costs for fraud prevention and data security, interchange fee revenue, fraudulent transactions, and fraud losses.

One commenter expressed support for limiting the costs collected to those related to authorization, clearance, and settlement. Five commenters, however, asserted that the set of costs should be expanded to all debit card costs to provide the Board a more comprehensive accounting of debit card program costs and put authorization, clearance, and settlement costs into context. The Board requested comment on the issuers' ability to report the subset of customer service costs associated with customer inquiries regarding particular debit card transactions (as opposed to customer inquiries regarding the account, the debit card generally, or credit cards/ATM cards). One commenter noted that most issuers track customer inquiries by type and have reporting systems in place to report at this level of detail. Thus, the commenter believed that the costs of handling cardholder inquiries should be included. The Board considered these comments and has decided to keep the set of data collected as proposed, with the exception of adding a few questions related to costs specific to particular debit card transactions, including cardholder inquiries. Inclusion of such costs can help put some context around authorization, clearance, and settlement costs without overly expanding the survey. Although under the framework established by EFTA Section 920(a)(4)(B), costs specific to a particular debit transaction *may* be considered in the determination of costs included in the setting of the interchange fee standard, inclusion of these costs in the survey does not imply that the Board will change its determination of allowable costs.

Three commenters noted that respondents might use different methodologies when asked to allocate shared costs between categories and not necessarily based on the number of transactions as required by the surveys. One commenter, however, stated that a consistent methodology is important for a comparison across respondents. The Board recognizes that there are several allocation methodologies that could be reasonably used to distribute costs, however, also recognizes the importance of having a standard way of reporting these costs across respondents. Thus, the Board will direct issuers to follow the allocation methodology specified in relevant questions in the survey.

Additionally, several commenters expressed concern that the surveys lacked a reconciliation of the U.S. Generally Accepted Accounting Principles (GAAP) and the International Financial Reporting Standards (IFRS) for capital expenditures associated with authorization, clearance, and settlement. The Board considered these comments and has decided to allow respondents to use either GAAP or IFRS to report costs that are depreciated or amortized during 2011. The Board recognizes that even if issuers follow the same set of accounting standards, they may use different underlying assumptions, such as the useful life for equipment and software, thus inevitably introducing a degree of variability between issuers. Because issuer-to-issuer variability is inherent within either set of accounting standards, the Board believes that no substantial benefit would be derived by requiring the reporting based on a specific set of standards that may not be used by the issuer in other reporting contexts.

The Board requested comment regarding the usefulness of including a list of fraud prevention activities and, if so, which fraud prevention activities should be included for the survey. Five commenters responded to the question. All commenters thought the idea of a list was useful, but some raised concerns over the clarity of definitions, the need to remain flexible and open to new technologies, and the need for a non-exhaustive list. The list is not meant to be exhaustive but rather to assess the prevalence of what the Board understands to be common fraud prevention activities. The inclusion of the ''other'' category on the list and the accompanying textbox was meant to elicit from survey respondents additional categories of fraud prevention activities. The Board will assess the information provided and update the list periodically to reflect new fraud prevention activities as appropriate.

III. All Single-Message (PIN) Debit Card Transactions (Including General-Use Prepaid Card Transactions)

The Board proposed to ask respondents to submit data for the same set of questions asked in Section II, but specifically about single-message debit card programs, including general-use prepaid cards. In light of the addition of Section V on general-use prepaid cards, as discussed earlier, the Board will exclude general-use prepaid card transactions from this section.

IV. All Dual-Message (Signature) Debit Card Transactions (Including General-Use Prepaid Card Transactions)

The Board proposed to ask respondents to submit data for the same set of questions asked in Section II, but specifically about dual-message debit card programs, including general-use

[11] Section 235.8(b) of the Board's Regulation II requires that issuers covered by the interchange fee standards in Regulation II file reports with the Board. See *http://www.federalreserve.gov/paymentsystems/debitfees.htm* for a list of institutions that are known to be non-exempt as of December 31, 2010. This is not a complete list, as the Board had incomplete information to determine the exemption status of some institutions that may issue debit cards.

prepaid cards. In light of the addition of Section V on general-use prepaid cards, as discussed earlier, the Board will exclude general-use prepaid card transactions from this section.

Payment Card Network Survey (FR 3064b)

Section-by-Section Analysis

I. Respondent Information

The Board proposed to ask respondents to provide the network covered in this response and the contact person(s) name, section of the survey for which they are responsible, email, and phone number. Respondents also would report whether the payment card network is a single-message (PIN) or dual-message (signature) network, and whether the payment card network offers a tiered interchange fee rate schedule that differentiates between exempt issuers and non-exempt issuers, and the number of merchant locations. The Board received no comments on this section. This section will be implemented as proposed with clarifying changes as appropriate.

II. Debit Card Transactions (Including General-Use Prepaid Card Transactions)

The Board proposed to ask respondents to report the volume and value of settled purchase transactions; as well as information related to card-present versus card-not-present transactions; general-use prepaid card versus non-general-use prepaid card transactions; general-use prepaid card transactions exempt from the interchange fee standards in Regulation II versus general-use prepaid card transactions that are not exempt; transactions processed for small issuers that are exempt from the interchange fee standards versus those processed for non-exempt issuers; pre- and post-effective date transactions processed for exempt and non-exempt debit card issuers; chargebacks and returns to merchants; the value of interchange fees; the value of network fees; and payments and incentives paid by networks to acquirers, merchants, and issuers.

The Board requested comment on whether the networks can provide data for exempt and non-exempt issuers that compares information for three time periods: January 1 to June 30, 2011 (during which all transactions would be considered exempt); July 1 to September 30, 2011 (during which some networks may have begun to distinguish between exempt and non-exempt issuers, if such networks are offering a tiered interchange fee schedule); and October 1 to December 31, 2011 (during which all networks that provide a tiered interchange fee schedule would distinguish between exempt and non-exempt issuers). Four commenters stated that the data should be collected only for two time periods, pre-and post-October 1, 2011, in order to assess the effect of Regulation II on the practices of networks in paying and assessing fees. The Board considered the comments and has decided to modify the request to collect data for two time periods: January 1 to September 30, 2011 and October 1 to December 31, 2011.

By order of the Board of Governors of the Federal Reserve System, December 16, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–32600 Filed 12–20–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Faribault FSL Bancorporation, Inc.,* Faribault, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of 1st United Bank, Faribault, Minnesota. 1st United Bank, Faribault, Minnesota, intends to convert from a federal savings bank to a Minnesota state-chartered bank.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Private Bancorp of America, Inc.,* La Jolla, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Diego Private Bank, La Jolla, California.

Board of Governors of the Federal Reserve System, December 16, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–32624 Filed 12–20–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for items (a)–(c) below setting out the information collection requirements pertaining to the Commission's administrative activities. (OMB Control Number 3084–0047). That clearance expires on December 31, 2011.

DATES: Comments must be filed by January 20, 2012.

ADDRESSES: Interested parties may submit written comments by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using this Web link: *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2.* Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600

Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Nicholas Mastrocinque (Nick M) and Ami Dziekan (Ami D), Bureau of Consumer Protection, Federal Trade Commission, H–228, 600 Pennsylvania Avenue NW., Washington, DC 20580, Nick M: (202) 326–3188 and Ami D: (202) 326–2648.

SUPPLEMENTARY INFORMATION:

Title: Administrative Activities.

OMB Control Number: 3084–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The currently approved information collection consists of: (a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) the FTC's program evaluation activities and (d) the FTC's Applicant Background Form. The Commission is not seeking clearance renewal relating to item (d), the Applicant Background Form.

On September 12, 2011, the Commission sought comment on the information collection requirements in the R-value Rule. 76 FR 56196. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Estimated Annual Hours Burden: 187,114 hours.

Activity	Number respondents	Time/Activity	Total hours
Applications to the Commission	75	2 hours	150
Misc. and fraud-related consumer complaints (phone)	262,000	6.1min	26,724
Misc. and fraud-related consumer complaints (online)	281,000	5 min	23,323
Do-Not-Call related consumer complaints (phone)	355,000	3.0 min	17,750
Do-Not-Call related consumer complaints (online)	1,937,000	2.5 min	81,354
Identity theft complaints (phone)	212,000	6.2 min	21,836
Identity theft complaints (online)	57,000	15 min	14,250
Customer Satisfaction Questionnaire (phone)	6,000	4.3 min	432
Customer Satisfaction Questionnaire (online)	27,000	2.7 min	1,215
Program Evaluations, Review of Divestiture Orders (Respondents).	15	4 hours	60
Program Evaluations, Review of Divestiture Orders (Monitor Trustees).	2	2 hours	4
Program Evaluations, Review of Competition Advocacy Program.	20	0.75 hour	15
Totals	3,137,112		187,114

* Annual estimate for each of the three years.

** Number of consumer calls and online submissions are calculated by projecting over the 3-year clearance period sought 5% annual growth.

There is more information relating to likely respondents for each type of activity and for total estimated annual labor costs in the 60-Day FR Notice. One correction to annual cost burden for likely respondents for Applications to the Commission is that the annual cost burden is approximately $69,000 (as opposed to the $46,000 set out in the 60-Day FR Notice). This is because the projected annual hours for those likely respondents is 150 and not 100.

Request For Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 20, 2012. Write ''Administrative Activities: FTC File No. P911409'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Administrative Activities: FTC File No. P911409'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your

paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 20, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–32574 Filed 12–20–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From HSMS Patient Safety Organization

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from the HSMS Patient Safety Organization of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on December 6, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from the HSMS Patient Safety Organization, PSO number P0077, which is a component entity of Healthcare Safety Management Systems, Inc., to voluntarily relinquish its status as a PSO. Accordingly, the HSMS Patient Safety Organization was delisted effective at 12:00 Midnight ET (2400) on December 6, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: December 14, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–32578 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the Georgia Hospital Association Research and Education Foundation Patient Safety Organization (GHA–PSO)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from The Georgia Hospital Association Research and Education Foundation Patient Safety Organization (GHA–PSO) of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Pub. L. 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on December 6, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to

conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from The Georgia Hospital Association Research and Education Foundation Patient Safety Organization (GHA–PSO), PSO number P0057, which is a component entity of the Georgia Hospital Association Research and Education Foundation, to voluntarily relinquish its status as a PSO. Accordingly, The Georgia Hospital Association Research and Education Foundation Patient Safety Organization (GHA–PSO) was delisted effective at 12:00 Midnight ET (2400) on December 6, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: December 14, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–32579 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5048–N]

Medicare Program; Independence at Home Demonstration Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice creates a new demonstration program for chronically ill Medicare beneficiaries to test a payment incentive and service delivery system that utilizes physician and nurse practitioner directed home-based primary care teams aimed at improving health outcomes and reducing expenditures, beginning December 21, 2011.

DATES: *Effective Date:* This notice is effective on December 21, 2011.

Application Deadline: February 6, 2012 at 5 p.m., Eastern Standard Time (E.S.T.).

FOR FURTHER INFORMATION CONTACT: Linda Colantino (410) 786–3343. Jennifer Brown (410) 786–4036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3024 of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111–148, enacted on March 23, 2010), amends title XVIII of the Social Security Act (the Act) by establishing the Independence at Home (IAH) Demonstration.

The IAH Demonstration will test a service delivery model that utilizes physician and nurse practitioner directed primary care teams to provide services to high cost, chronically ill Medicare beneficiaries in their homes. Participating practices will be accountable for providing comprehensive, coordinated, continuous, and accessible care to high-need populations at home and coordinate health care across all treatment settings. Participating practices may share in savings under the demonstration if specified quality measures and savings targets are achieved.

II. Provisions of the Notice

We are seeking interested practices that can provide home-based primary care to Medicare beneficiaries for purposes of this demonstration. We anticipate that a wide variety of interested practices may be eligible to apply to the IAH Demonstration. The participants in the Demonstration will be multidisciplinary teams composed of various members such as physicians, nurse practitioners, physician assistants, pharmacists, social workers, and other supporting staff. The practices must be led by physicians or nurse practitioners and must have experience providing home-based primary care to patients with multiple chronic illnesses. These practices will also be organized, at least in part, for the purpose of providing physician services. Qualifying practices may share in savings. Providers cannot be participating in section 1899 of the Act, the Medicare Shared Savings Program, or other Medicare shared savings programs at the time of the Demonstration.

Each participating practice must provide services to at least 200 applicable beneficiaries during each year of the demonstration. A practice's enrollment may vary over each year but must reach at least an average of 200 applicable beneficiaries during the first year and not drop below that average for the remainder of the demonstration. There are three options available for practices to apply for the Demonstration. Practices may apply as a sole legal entity, consortium, or become a part of a national pool. These three options are for the purpose of establishing expenditure targets and determining incentive payments. Practices must enroll all existing patients meeting beneficiary eligibility criteria.

Participating practices will make in-home visits tailored to an individual patient's needs. Each practice must be available 24 hours per day, 7 days a week to carry out plans of care. Practices must use electronic health information systems, remote monitoring, and mobile diagnostic technology.

Applicable beneficiaries are defined as Medicare fee-for-service (FFS) patients, who have at least 2 chronic illnesses, need assistance with 2 or more functional dependencies requiring the assistance of another person, have had a nonelective hospital admission within the last 12 months, and have received acute or subacute rehabilitation services within the last 12 months. Beneficiaries to be included in the Demonstration must be entitled to Medicare part A and enrolled in Medicare part B, not enrolled in a Medicare Advantage plan or a Program for All-Inclusive Care for the Elderly, and cannot be enrolled in a practice that is part of the Medicare Shared Savings Program or other program that shares Medicare savings.

We will establish a practice-specific spending target derived from claims, based on expected Medicare FFS utilization for each of the beneficiaries in the practices in the absence of the Demonstration. Annual spending targets will be calculated for each participating practice at the end of each performance year. The spending target will be derived from a base expenditure amount equal to the average payments under Medicare Part A and Part B. Savings will be calculated as the difference between each practice's spending target and actual costs. Practices will also be required to meet quality performance standards in order to share in any savings. Under this 3-year demonstration, IAH providers will continue to bill and be paid standard Medicare FFS reimbursement.

Applicants must submit completed applications following the format outlined in the Demonstration application instructions in order to be considered for review by CMS. Applications not received in this format will not be considered for review.

For the Project Application and specific details regarding the IAH Demonstration, please refer to the CMS Web site at *http://www.cms.gov/*

DemoProjectsEvalRpts/downloads/IAH_FactSheet.pdf

Please refer to file code [CMS–5048–N] on the Application. Applicants must submit at least 1 electronic copy on CD–ROM of the Application and are required to submit a paper version of the Application with an original signature. Because of staffing and resource limitations, we cannot accept applicationss by facsimile (FAX) transmission. Hard copies and electronic copies must be identical.

Applications for practices applying to the IAH Demonstration will be considered timely if they are received on or before 5 p.m., Eastern Standard Time (E.S.T.) on the date listed in the **DATES** section of this notice.

III. Collection of Information Requirements

Accordance to section 3024 of the Affordable Care Act this notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 3024 of the Affordable Care Act.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medicare—Supplementary Medical Insurance Program)

Dated: September 9, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–32568 Filed 12–20–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0902]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Product Labeling: Medication Guide Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations requiring the distribution of patient labeling, called Medications Guides, for certain products that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication.

DATES: Submit either electronic or written comments on the collection of information by February 21, 2012.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collections of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Product Labeling; Medication Guide Requirements (OMB Control Number 0910–0393)—Extension

FDA regulations require the distribution of patient labeling, called Medication Guides, for certain prescription human drug and biological products used primarily on an outpatient basis that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information. These Medication Guides inform patients about the most important information they should know about these products in order to use them safely and effectively. Included is information such as the drug's approved uses, contraindications, adverse drug reactions, and cautions for specific populations, with a focus on why the particular product requires a Medication Guide. These regulations are intended to improve the public health by providing information necessary for patients to use certain medication safely and effectively.

The regulations contain the following reporting requirements that are subject to the PRA. The estimates for the burden hours imposed by the following regulations are listed in table 1 of this document:

- 21 CFR 208.20—Applicants must submit draft Medication Guides for FDA approval according to the prescribed content and format.
- 21 CFR 208.24(e)—Each authorized dispenser of a prescription drug product for which a Medication Guide is required, when dispensing the product to a patient or to a patient's agent, must provide a Medication Guide directly to each patient unless an exemption applies under 21 CFR 208.26.
- 21 CFR 208.26 (a)—Requests may be submitted for exemption or deferral from particular Medication Guide content or format requirements.
- 21 CFR 314.70(b)(3)(ii) and 21 CFR 601.12(f)—Application holders must submit changes to Medication Guides to FDA for prior approval as supplements to their applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
208.20	25	1	25	320	8,000
314.70(b)(3)(ii), 601.12(f)	5	1	5	72	360
208.24(e)	59,000	5,000	295 million	3 minutes	14,750,000
208.26(a)	1	1	1	4	4
Total					14,758,364

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32548 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending to January 15, 2013, the comment period for the notice of public meeting; request for public comments that published in the **Federal Register** of September 20, 2011 (76 FR 58279). In that notice, FDA requested comments on the Animal Drug User Fee Act (ADUFA) program to date and solicited suggestions regarding the features FDA should propose for the next ADUFA program. The Agency is taking this action to ensure that interested persons have the option of submitting comments throughout the reauthorization of ADUFA.

DATES: Submit either electronic or written comments by January 15, 2013.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donal Parks, Center for Veterinary Medicine (HFV–010), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–8688, *ADUFAReauthorization@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 20, 2011, FDA published a notice of public meeting; request for comments to solicit input from the public on what FDA should consider including in the reauthorization of ADUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the ADUFA program thus far?

2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

Additional background materials, including the transcript of the public meeting, are available on the FDA's Web site.

The Agency is reopening the comment period to allow members of the general public or of stakeholder groups the opportunity to provide comments throughout the process of reauthorizing ADUFA.

II. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32567 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending to January 15, 2013, the comment period for the notice of public meeting; request for public comments, published in the **Federal Register** of September 20, 2011 (76 FR 58277). In that notice, FDA requested comments on the Animal Generic Drug User Fee Act (AGDUFA) program to date and solicited suggestions regarding the features FDA should propose for the next AGDUFA program. The Agency is taking this action to ensure that interested persons have the option of submitting comments throughout the reauthorization of AGDUFA.

DATES: Submit either electronic or written comments by January 15, 2013.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donal Parks, Center for Veterinary Medicine (HFV–010), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–8688, *AGDUFAReauthorization@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 20, 2011, FDA published a notice of

public meeting; request for comments, to solicit input from the public on what FDA should consider including in the reauthorization of AGDUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the AGDUFA program thus far?

2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

Additional background materials, including the transcript of the public meeting, are available on the FDA's Web site.

The Agency is reopening the comment period to allow members of the general public or of stakeholder groups the opportunity to provide comments throughout the process of reauthorizing AGDUFA.

II. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32565 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0842]

Gluten in Drug Products; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket to obtain information and comments that will assist the Agency in its deliberations about ways to help individuals with celiac disease avoid the presence of gluten in drug products. In particular, FDA is interested in information on ingredients present in human drug products marketed in the United States that are currently derived from wheat, barley, or rye.

DATES: Submit either electronic or written information and comments by March 20, 2012.

ADDRESSES: Submit electronic information and comments to *http://www.regulations.gov.* Submit written information and comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify both electronic and written comments and any supporting documents with the docket number in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Yana R. Mille, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, rm. 4152, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, (301) 796–1577.

SUPPLEMENTARY INFORMATION:

I. Background

A. Celiac Disease

Celiac disease (also known as celiac sprue and gluten-sensitive enteropathy) is an immune-mediated chronic inflammatory disorder affecting primarily the small intestine in genetically susceptible individuals (Refs. 1 and 2). In these individuals, the symptoms of celiac disease are triggered by the ingestion of wheat grain proteins collectively known as glutens (Ref. 3). The consumption of wheat gluten and similar proteins in barley and rye stimulates the production of antibodies and inflammatory cells, resulting in an abnormal immune response. The resultant immediate inflammatory reaction damages the tiny, fingerlike protrusions called ''villi'' that line the small intestine and absorb nutrients from food (Refs. 4 and 5). In addition, over time, continued dietary exposure to gluten from wheat, barley, or rye can lead to impaired absorption of nutrients and a variety of other serious health problems (Ref. 4). For the purposes of this notice, the phrase ''wheat, barley, or rye'' includes wheat, barley, and rye, as well as the crossbred hybrids of these grains.

The prevalence of celiac disease in the United States is estimated to range from about 0.4 percent to about 1 percent of the population (Refs. 1 and 6). Celiac disease may go undetected in some individuals for years before they develop symptoms that cause them to seek medical attention (Refs. 7 and 8).

The standard treatment of celiac disease is the elimination of gluten-containing products from the diet (Ref. 1). Over time, strict avoidance of gluten from wheat, barley, or rye sources can resolve the symptoms, mitigate and possibly reverse intestinal damage, and reduce the health risks associated with celiac disease (Ref. 4). For some individuals with celiac disease, over time, failure to avoid consumption of gluten from wheat, barley, and rye can lead to severe and sometimes life-threatening complications (Refs. 9 to 11).

B. Gluten and Grains of Concern for Individuals With Celiac Disease

Technically, ''gluten'' is the storage protein of wheat that is composed of alcohol-soluble gliadins and insoluble glutenins (Ref. 2). Gliadins have been most closely studied and have been found to be the main antigen in celiac disease; however, glutenins also have been implicated in the disease (Refs. 12 and 13). The storage proteins of rye (secalins) and barley (hordeins) are similar in amino acid sequence to wheat gluten proteins and may trigger the same inflammatory response. For these reasons, the term ''gluten'' has been adopted to mean any proteins implicated in celiac disease (Ref. 2). In this notice, the term ''gluten'' is used to refer to the antigenic proteins of wheat, barley, and rye implicated in celiac disease.

The grains that contain gluten that can cause harm to individuals who have celiac disease are as follows: Wheat (including durum wheat, spelt wheat, and kamut), barley, rye, and crossbred hybrids of these grains (e.g., triticale, which is a cross between wheat and rye) (Refs. 14 and 15). While there is no general agreement among experts about the extent to which oats may present a hazard for individuals who have celiac disease (Refs. 16 to 18), it is generally believed that moderate amounts of oats can be ingested safely by the majority of individuals with celiac disease (Ref. 4).

C. Determination of Tolerable Daily Intake

The extent of risk posed to celiac patients by ingestion of trace amounts of gluten is uncertain. The majority of current data is from retrospective studies or nonrandomized, prospective, nonblinded studies without a placebo challenge group, limiting the conclusive evidence on safe thresholds for gluten intake. In the context of an ongoing rulemaking to define criteria for voluntary ''gluten-free'' claims on food,

FDA's Office of Food Safety in the Center for Food Safety and Applied Nutrition undertook a health hazard assessment for gluten exposure in individuals with celiac disease.

The assessment, which is available for public review (Ref. 19), included a description and characterization of available prospective dose-effect data, as well as a safety assessment derived from prospective gluten challenge data from individuals with celiac disease. The assessment specifically examined morphological and clinical adverse effects that are reflective of celiac disease. These reactions were subsequently placed into subgroups identifying whether they occurred after acute, subchronic, or chronic exposures. The no observable adverse effect level and lowest observable adverse effect level were determined for each study considered. Uncertainty factors were applied to account for limitations in data, variability in response between patients, and other potential gaps, and from this information tolerable daily intake levels of exposure were derived. Based on this health hazard assessment, a conservative tolerable daily intake level for gluten in individuals with celiac disease is 0.4 milligrams (mg) gluten per day for adverse morphological effects and 0.015 mg gluten per day for adverse clinical effects.

D. Ingredients at Issue

The Agency believes that wheat is not used to a significant extent in the production of drug ingredients and that barley and rye are used either rarely or not at all. FDA is aware, however, that certain ingredients in drug products may be derived from wheat. For the purposes of this notice, the phrase ''drug products'' refers to all FDA-regulated human drug products marketed in the United States. These include prescription, nonprescription, biologic, and homeopathic drug products. The National Formulary includes a monograph for wheat starch. Some monographs in the National Formulary and the U.S. Pharmacopeia include statements that wheat or wheat starch may be used as source materials. Other monographs include statements that starch may be used as a source material without specifying the plant source of the starch.

This request for information and comment includes information on all drug ingredients that may be derived from wheat, barley, or rye—whether or not they are the subject of a compendial monograph. Examples of such ingredients that FDA is aware of include: Wheat starch, modified starch, pregelatinized starch, pregelatinized modified starch, sodium starch glycolate, dextrates, dextrin, caramel, dextrimaltose, malt, maltodextrin, gamma cyclodextrin, and wheat bran. Certain flavor ingredients also may be derived from wheat, barley, or rye.

This notice does not request information relating to the possible presence of gluten from wheat, barley, or rye in drug products at trace levels that may result from accidental contamination.

II. Discussion and Approaches

A. Discussion

FDA is considering ways to help individuals with celiac disease avoid the presence of gluten in drug products. In 2008, the Agency received a citizen petition from an individual asking that the Agency prohibit the addition of wheat gluten to drug products (Ref. 20). FDA has heard from other individuals and organizations in recent years asking that the Agency do more to provide assurance to individuals who have celiac disease that drug products will not harm them.

Currently, the possible presence of gluten in drug products presents a difficult challenge for individuals who have celiac disease. Ingredient information provided on drug labels and information available to pharmacists and physicians may not indicate whether certain drug products contain gluten. Faced with uncertainty, some patients may forego important treatment.

The possible presence of gluten in drug products presents a challenge to individuals who have celiac disease that is different from the challenges associated with dietary gluten. For example, medication is sometimes needed on an urgent basis, not leaving time for an investigation into the drug's gluten content. In some cases, a patient with celiac disease may be unable to confirm the gluten-free status of a drug product and may have difficulty obtaining a product known to be manufactured without gluten.

B. Approaches

The Agency is evaluating various approaches for helping patients with celiac disease avoid the presence of gluten in drug products. While the Food Allergen Labeling and Consumer Protection Act of 2004 (Pub. L. 108–282, Title II) specifies the creation of a standard for voluntary ''gluten free'' labeling for foods (see 72 FR 2795, January 23, 2007; 76 FR 46671, August 3, 2011), other options may be preferable for drugs, given the distinct considerations they present. FDA is particularly interested in understanding what impact would result if the use of drug ingredients derived from wheat, barley, or rye were completely discontinued in human drugs. If interested stakeholders do not identify reasons why certain ingredients must be derived from wheat, barley, or rye—or why the flexibility to use these grains as ingredient sources is important—discontinuing use of such ingredients may be attractive for its simplicity and effectiveness in addressing the issue.

III. Requested Information and Comments Regarding FDA-Regulated Human Drug Products Marketed in the United States

Interested persons are invited to provide detailed comment on all aspects of this issue with respect to prescription, nonprescription, biologic, and homeopathic drug products. FDA is particularly interested in responses to the following questions.

A. Current Practice

1. What inactive ingredients used in drug products marketed in the United States today are derived from wheat, barley, or rye? Please identify specific ingredients derived from any of these sources.

2. Please provide any available information on the number of drug products that contain inactive ingredients derived from wheat, barley, or rye. What is the general prevalence of such inactive ingredients in the human drug supply?

3. To what extent are *active* ingredients derived from wheat, barley, or rye used in drug products?

4. Are certain ingredients derived from wheat, barley, or rye processed in a way that removes gluten? Please provide information concerning the certainty with which processing methods may remove or destroy gluten and identify any test methods used to confirm the absence of gluten. The Agency's interest extends to ingredients that may be derived from a variety of starch sources if they are sometimes derived from wheat. Sugar alcohols such as sorbitol, xylitol, maltitol, and mannitol may fall into this category.

5. Do manufacturers routinely test ingredients or drug products to determine whether gluten is present? If so, what test methods are used and what is their sensitivity?

B. Flexibility and Consequences

6. What negative consequences, if any, would arise from discontinuing the use of ingredients derived from wheat, barley, or rye in drug products? Are

there certain applications for which an ingredient (inactive or active) must be derived from one of these grains for reasons related to physical properties, performance characteristics, safety, efficacy, availability, or reformulation burden, as well as other reasons?

C. Exposure Estimate

7. Is it possible to determine, with a high level of assurance, that certain drug ingredients derived from wheat, barley, or rye are free of gluten or would contribute only very dilute, insignificant, and nonharmful quantities of gluten to a drug product? If so, what scientific evidence supports such a determination?

D. Routes of Administration

8. FDA believes that the use of ingredients derived from wheat, barley, or rye in drugs administered orally presents a particular risk to individuals who have celiac disease, as compared to use of these ingredients in drugs dispensed in dosage forms intended for other routes of administration. FDA welcomes comments in this area. Are ingredients derived from wheat, barley, or rye presently used in drugs that are intended for nonoral routes of administration, such as topical, injectable, or ano-rectally administered drugs? Please submit any data or information on risks to celiac patients associated with nonoral exposure to ingredients derived from wheat, barley, or rye.

E. Incidental Addition of Gluten

9. FDA is primarily interested in ingredients derived from wheat, barley, or rye that are intentionally added to and intended to remain in the drug product. However, the Agency welcomes responses to the following question: Are processing aids or production aids (e.g., filtration media or fermentation media) derived from wheat, barley, or rye used today that could introduce gluten into a drug product at nontrivial levels?

IV. Submission of Information and Comments

Interested persons may submit information and comments responsive to this request to the Division of Dockets Management (see **ADDRESSES**) in electronic or written form. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and on the Internet at *http://www.regulations.gov.*

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fasano, A., and C. Catassi, ''Current Approaches to Diagnosis and Treatment of Celiac Disease: An Evolving Spectrum,'' *Gastroenterology,* vol. 120, pp. 636–651, 2001.
2. National Institutes of Health (NIH), ''NIH Consensus Development Conference Statement on Celiac Disease, June 28–30, 2004,'' *Gastroenterology,* vol. 128, pp. S1–S9, 2005.
3. Jabri, B., D.D. Kasarda, and P.H.R. Green, ''Innate and Adaptive Immunity: The Yin and Yang of Celiac Disease,'' *Immunological Reviews,* vol. 206, pp. 219–231, 2005.
4. Molberg, O., N.S. Flaete, T. Jensen, *et al.,* ''Intestinal T–Cell Responses to High-Molecular-Weight Glutenins in Celiac Disease,'' *Gastroenterology,* vol. 125, pp. 337–344, 2003.
5. Farrell, R.J. and C.P. Kelly, ''Celiac Sprue,'' *The New England Journal of Medicine,* vol. 346, pp. 180–188, 2002.
6. Fasano, A., I. Berti, T. Gerarduzzi, *et al.,* ''Prevalence of Celiac Disease in At-Risk and Not-At-Risk Groups in the United States: A Large Multicenter Study,'' *Archives of Internal Medicine,* vol. 163, pp. 286–292, 2003.
7. West, J., R.F.A. Logan, P.G. Hill, *et al.,* ''Seroprevalence, Correlates, and Characteristics of Undetected Coeliac Disease in England,'' *Gut,* vol. 52, pp. 960–965, 2003.
8. Green, P.H.R. and B. Jabri, ''Coeliac Disease,'' *Lancet,* vol. 362, pp. 383–391, 2003.
9. Rubio-Tapia, A., R.A. Kyle, E.L. Kaplan, *et al.,* ''Increased Prevalence and Mortality in Undiagnosed Celiac Disease,'' *Gastroenterology,* vol. 137, pp. 88–93, 2009.
10. Catassi, C., I. Bearzo, and G.K.T. Holmes, ''Association of Celiac Disease and Intestinal Lymphomas and Other Cancers,'' *Gastroenterology,* vol. 128, pp. S79–S86, 2005.
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12. Waga, J., ''Structure and Allergenicity of Wheat Gluten Proteins—A Review,'' *Polish Journal of Food and Nutrition Sciences,* vol. 13, pp. 327–338, 2004.
13. Vader, W., Y. Kooy, P. Van Veelen, *et al.,* ''The Gluten Response in Children With Celiac Disease Is Directed Toward Multiple Gliadin and Glutenin Peptides,'' *Gastroenterology,* vol. 122, pp. 1729–1737, 2002.
14. Kieffer, M., P.J. Frazier, NW.R. Daniels, *et al.,* ''Wheat Gliadin Fractions and Other Cereal Antigens Reactive With Antibodies in the Sera of Coeliac Patients,'' *Clinical and Experimental Immunology,* vol. 50, pp. 651–660, 1982.
15. Sturgess, R.P., H.J. Ellis, and P.J. Ciclitira, ''Cereal Chemistry, Molecular Biology, and Toxicity in Coeliac Disease,'' *Gut,* vol. 32, pp. 1055–1060, 1991.
16. Lundin, K.E.A., E.M. Nilsen, H.G. Scott, *et al.,* ''Oats Induced Villous Atrophy in Coeliac Disease,'' *Gut,* vol. 52, pp. 1649–1652, 2003.
17. Janatuinen, E.K., T.A. Kemppainen, R.J.K. Julkunen, *et al.,* ''No Harm From Five Year Ingestion of Oats in Coeliac Disease,'' *Gut,* vol. 50, pp. 332–335, 2002.
18. Haboubi, N.Y., S. Taylor, and S. Jones, ''Coeliac Disease and Oats: A Systematic Review,'' *Postgraduate Medicine Journal,* vol. 82, pp. 672–678, 2006.
19. Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, ''Health Hazard Assessment for Gluten Exposure in Individuals With Celiac Disease: Determination of Tolerable Daily Intake Levels and Levels of Concern for Gluten,'' May 2011.
20. Citizen Petition submitted by Michael Weber, June 2008, Docket No. FDA–2008–P–0333.

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32551 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Thursday, December 8, 2011 (76 FR 76738). The document announced a public meeting entitled ''Generic Drug User Fee.'' The document published with an inadvertent error in the **DATES** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, (301) 796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–31630, appearing on page 76738

in the **Federal Register** of Thursday, December 8, 2011, the following correction is made:

On page 76738, in the third column, under the **DATES** section, ''January 6, 2011'' is corrected to read ''January 6, 2012''.

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–32562 Filed 12–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Center for Inherited Disease Research Access Committee.

Date: January 13, 2012.

Time: 8:30 a.m. to 1:30 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: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, (301) 402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32705 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 of Allergy and Infectious Diseases Special Emphasis Panel. NIAID Peer Review Meeting.

Date: January 9, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 594–1009, *fdesilva@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Systems Approach to Immunity and Inflammation.

Date: January 12–13, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Quirijn Vos, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32708 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee.

Date: February 23–24, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Rebecca Wagenaar Miller, Ph.D., Scientific Review Officer, 6701 Democracy Blvd., Rm 666, Bethesda, MD 20892, (301) 594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32675 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications.

Date: January 18, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, 3245–B, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Susana Mendez, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 496–2550, *mendezs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32673 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NCI–Frederick Advisory Committee.

The meeting will be open to the public, 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.

Name of Committee: NCI–Frederick Advisory Committee.

Date: January 25, 2012.

Time: 10:30 a.m. to 4 p.m.

Agenda: Review major new projects proposed to be performed at NCI–Frederick.

Place: NCI–Frederick Library and Conference Center, Building 549, 549 Sultan Drive, Executive Board Room, Frederick, MD 21702.

Contact Person: Thomas M. Vollberg, Sr., Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard 7th Floor, Room 7142, Bethesda, MD 20892–8327, (301) 594–9582.

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.

NCI–Frederick is located within the Ft. Detrick U.S. Army facility in Frederick, Maryland. Please be aware that you will be asked to provide Ft. Detrick security with proof of identification (*e.g.,* driver's license, NIH ID, passport), and your vehicle will be briefly searched, including the trunk and any boxes, bags, or other items, before being allowed to enter the facility grounds. All visitors must enter through the Old Farm Gate, which is located on Rosemont Avenue. Please note that there are two gates on Rosemont Avenue, one for decaled vehicles, and one for Visitors. The Old Farm Gate, for visitors, is located at the intersection of Old Farm Dr. and Rosemont Ave. Note that the intended destination is the Conference Center/Scientific Library (Bldg. 549). A visitor's guide to the NCI–Frederick campus with maps and directions to Building 549 can be found at *http://ncifrederick.cancer.gov/About/VisitorsGuide.aspx.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32687 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

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. App.), 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 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 General Medical Sciences Council

Date: January 19–20, 2012

Closed: January 19, 2012, 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, 45 Center Drive, Bethesda, MD 20892

Open: January 20, 2012, 8:30 a.m. to Adjournment

Agenda: For the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC 6200, Bethesda, MD 20892, (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 taxis, 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.nigms.nih.gov/About/Council/* 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 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32683 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Center for Scientific Review Special Emphasis Panel Social Sciences and Population Studies: Special Topics.

Date: January 19, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Suites by Hilton Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892 (301) 437–3478, *wieschd@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: December 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32680 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, 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.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: January 10, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709 (Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via email to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.)

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (i.e. WORD, Rich Text, PDF) may be submitted via email to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32679 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, PCCTR.

Date: February 1, 2012.

Time: 11:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Mechanistic Research on Natural Products.

Date: March 1–2, 2012.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary, & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32676 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

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. App.), 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: Vascular and Hematology—1.

Date: January 17, 2012.

Time: 3:30 p.m. to 5:30 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: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Social Science and Population Studies: Second Panel.

Date: January 19–20, 2012.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Suites by Hilton Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712. *ryansj@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: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32674 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

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 Council for Complementary and Alternative Medicine.

Date: February 3, 2012.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: 10:45 a.m. to 4 p.m.

Agenda: A report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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: nccam.nih.gov/about/naccam/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32672 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review PAR10–170 T90s & PAR10–171 T32s.

Date: January 24, 2012.

Time: 8 a.m. to 6 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: Raj K. Krishnaraju, Ph.D., MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, (301) 594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32704 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Avian Influenza Vaccines for Domesticated Poultry/Wild Birds To Be Provided to the National Veterinary Stockpile Program and Avian Influenza Vaccines To Be Sold as Veterinary Biological Products

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in Patent Applications USSN 61/021,596, filed Jan 16, 2008; 61/023,341, filed Jan 24, 2008; PCT/US2009/031329, filed Jan 16, 2009; and USSN 12/838,292, filed Jul 16, 2010; entitled ''Influenza DNA Vaccination and Methods of Use Thereof'', by Rao *et al* (NIAID/VRC) (E–050–2008/0,1,2,3), to ANQUAGEN, LLC having a place of business at 2329 N. Career Avenue, Suite 306, Sioux Falls, SD 57107. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before January 5, 2012 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *ThalhamC@mail.nih.gov*; Telephone: (301) 435–4507; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective worldwide exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to compositions and methods of use as Veterinary Influenza Vaccines. Sustained outbreaks of highly pathogenic influenza in animals increase the risk of reassortment and adaption to humans. This technology describes DNA vaccines against influenza serotypes H5N1, H1N1, H3N2, and H3N8 for poultry, swine and equine. Particularly one vaccine, a trivalent combination of H5N1 immunogens, effectively protects against homologous and heterologous challenges. These vaccines can be delivered intramuscularly or through needle-free delivery mechanism. These veterinary influenza vaccines are specifically designed for poultry, swine and equine recipients, with the following advantages: (a) More efficient and versatile than the conventional inactivated whole-virus vaccines; (b) Can be precisely tailored to target one or more strains of avian, swine or equine outbreaks; (c) Adaptable to large scale immunization; (e) Shorter production time than the current egg-based technology; (f) Noninfectious and safe to manipulate and handle; (g) Needle-free device delivery elicits robust cellular immune response; and (h) Because they do not contain other viral proteins, a diagnostic test will enable vaccinated animals to be differentiated from naturally infected animals, key if governments mandate vaccination and a vital consideration for the international industry. Data are available for mice, chickens, pigs, and horses.

The field of use may be limited to ''Avian influenza vaccines for domesticated poultry/wild birds to be provided to the National Veterinary Stockpile program and avian influenza vaccines to be sold as Veterinary Biological Products''.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 15, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–32701 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Veterinary Biological Products for Swine Influenza Vaccines

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in Patent Applications USSN 61/021,596, filed Jan 16, 2008; 61/023,341, filed Jan 24, 2008; PCT/US2009/031329, filed Jan 16, 2009; and USSN 12/838,292, filed Jul 16, 2010; entitled ''Influenza DNA Vaccination and Methods of Use Thereof'', by Rao *et al* (NIAID/VRC) (E–050–2008/0,1,2,3), to Newport Laboratories having a place of business in 1520 Prairie Drive, Worthington, MN 56187. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are

received by the NIH Office of Technology Transfer on or before January 20, 2012 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *ThalhamC@mail.nih.gov;* Telephone: (301) 435–4507; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION:

The prospective worldwide exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to compositions and methods of use as Veterinary Influenza Vaccines. Sustained outbreaks of highly pathogenic influenza in animals increase the risk of reassortment and adaption to humans. This technology describes DNA vaccines against influenza serotypes H5N1, H1N1, H3N2, and H3N8 for poultry, swine and equine. Particularly one vaccine, a trivalent combination of H5N1 immunogens, effectively protects against homologous and heterologous challenges. These vaccines can be delivered intramuscularly or through needle-free delivery mechanism. These veterinary influenza vaccines are specifically designed for poultry, swine and equine recipients, with the following advantages: (a) More efficient and versatile than the conventional inactivated whole-virus vaccines; (b) Can be precisely tailored to target one or more strains of avian, swine or equine outbreaks; (c) Adaptable to large scale immunization; (e) Shorter production time than the current egg-based technology; (f) Noninfectious and safe to manipulate and handle; (g) Needle-free device delivery elicits robust cellular immune response; and (h) Because they do not contain other viral proteins, a diagnostic test will enable vaccinated animals to be differentiated from naturally infected animals, key if governments mandate vaccination and a vital consideration for the international industry. Data are available for mice, chickens, pigs, and horses.

The field of use may be limited to ''Veterinary Biological Products for Swine Influenza Vaccines''.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 15, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–32706 Filed 12–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0973]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2012 minimum random drug testing rate at 50 percent of covered crewmembers.

DATES: The minimum random drug testing rate is effective January 1, 2012 through December 31, 2012. Marine employers must submit their 2011 Management Information System (MIS) reports no later than March 15, 2012.

ADDRESSES: Annual MIS reports may be submitted to Commandant (CG–545), U.S. Coast Guard Headquarters, 2100 Second Street SW., STOP 7561, Washington, DC 20593–7581 or by electronic submission to the following Internet address: *http://homeport.uscg.mil/Drugtestreports.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Casualty Analysis (CG–545), U.S. Coast Guard Headquarters, telephone (202) 372–1033. 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: The Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels in accordance with 46 CFR 16.230. Every marine employer is required by 46 CFR 16.500 to collect and maintain a record of drug testing program data for each calendar year, and submit this data by 15 March of the following year to the Coast Guard in an annual MIS report.

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year. The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry.

The Coast Guard announces that the minimum random drug testing rate for calendar year 2012 is 50 percent. The Coast Guard may lower this rate if, for two consecutive years, the drug test positive rate is less than 1.0 percent, in accordance with 46 CFR part 16.230(f)(2). MIS data for 2010 indicates that the positive rate is less than one percent industry-wide (0.740 percent). This is the first year ever that the positive rate has been below 1% for the marine transportation industry. In accordance with § 46 CFR part 16.230(f), the positive rate must be lower than 1% for two consecutive years before the random rate is eligible to be reduced to 25%. For 2012, the minimum random drug testing rate will continue at 50 percent of covered employees for the period of January 1, 2012 through December 31, 2012 in accordance with 46 CFR 16.230(e).

Dated: December 14, 2011.

Paul F. Thomas,

CAPT, USCG, Acting Director of Prevention Policy (CG–54).

[FR Doc. 2011–32627 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection; No form; Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 21, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), John Ramsay, Program Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

Comments are encouraged and will be accepted for sixty days until February 21, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, 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, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Program Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

Dated: December 9, 2011.

John Ramsay,

Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2011–32634 Filed 12–20–11; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: The meetings will be held on the first and third Friday of each month from 10 a.m. to 2 p.m. Eastern Time as follows: January 6, 2012; January 20, 2012; February 3, 2012; February 17, 2012; March 2, 2012 and March 16, 2012.

ADDRESSES: The meetings will be held from 10 a.m. to 2 p.m. Eastern Time in the McArdle Room (First Floor Conference Room) in the Yates Federal Building, USDA Forest Service Headquarters, 1400 Independence Ave. SW., Washington, DC 20250,

FOR FURTHER INFORMATION CONTACT: Roy Johnson, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1550; fax (208) 334–1549; or email *Roy_Johnson@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Roy Johnson (Designated Federal Officer) at *Roy_Johnson@ios.doi.gov* or (208) 334–1550 or 300 E. Mallard Drive, Suite 170, Boise, Idaho, 83706–6648.

Meeting Agenda: The meeting agenda will include: (1) Welcome and introduction of Council members; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Wildland Fire Management Cohesive Strategy; (5) Wildland Fire Issues; (6) Council Members' review and discussion of sub-committee activities; (7) Future Council activities; (8) Public comments which will be scheduled for 11:30 on each agenda; (9) and closing remarks. Participation is open to the public.

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Eckhoff at *Shari_Eckhoff@ios.doi.gov* no later than the Friday preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Eckhoff via email no later than the Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: Department of the

Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Eckhoff, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the Friday preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Eckhoff at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: December 8, 2011.

Roy Johnson,

Designated Federal Officer.

[FR Doc. 2011–32695 Filed 12–20–11; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0023]

Commercial Renewable Energy Transmission on the Outer Continental Shelf (OCS) Offshore Mid-Atlantic States, Notice of Proposed Grant Area and Request for Competitive Interest (RFCI) in the Area of the Atlantic Wind Connection Proposal

AGENCY: Bureau of Ocean Energy Management, Department of the Interior.

ACTION: Provide Public Notice of an Unsolicited Application for a Transmission Right-of-Way Grant Supporting Renewable Energy, Request for Submission of Indications of Competitive Interest, and Request for Public Comment.

SUMMARY: The purpose of this public notice is to: (1) Describe the Atlantic Wind Connection proposal submitted to BOEM; (2) solicit public input regarding the proposal, its potential environmental consequences, and the use of the area in which the proposal would be located; and (3) solicit submissions of indications of competitive interest for a right-of-way (ROW) grant for renewable energy purposes for the area identified in this notice.

On March 31, 2011, BOEM received an application from Atlantic Grid Holdings LLC (AGH) for a ROW grant on the OCS offshore New York, New Jersey, Delaware, Maryland, and Virginia. AGH's proposed project, Atlantic Wind Connection (AWC), would entail the construction and installation of a two-circuit, high-voltage direct current (HVDC) transmission line that would collect power generated by wind power generation facilities on the OCS and deliver it to the grid operated by PJM Interconnection LLC (PJM) and possibly also the New York Independent System Operator, LLC (NYISO). When the wind power generation facilities are not functioning at full capacity, the AWC facilities would facilitate the transmission of conventionally-generated electricity between points on the onshore grid.

Development of each phase would not be open-ended. Any ROW grant or plan approval contemplated by this notice would contain requirements that development under the grant take place within prescribed timeframes, as described in the grant, pursuant to 30 CFR 585.652(b). If AGH were to fail to meet such timeframes, BOEM may reduce the size of, terminate, or cancel the grant pursuant to 30 CFR 585.432–.437, or the terms of the grant itself. The application requests only a ROW grant—it does not request a lease for commercial wind generation.

This announcement invites the submission of indications of competitive interest for a ROW grant for the area requested by AGH to construct transmission facilities. BOEM will consider the responses to this public notice to determine whether competitive interest exists for the area requested by AGH, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a ROW grant for the area requested by AGH should submit detailed and specific information as described in the section entitled, ''Required Nomination Information.''

This announcement also requests that interested and affected parties comment and provide information about site conditions and multiple uses within the area identified in this notice that would be relevant to the proposed project or its impacts. The information that BOEM is requesting is described below in the section entitled, ''Requested Information from Interested or Affected Parties.''

This notice is published pursuant to subsection 8(p) of the OCS Lands Act, which was added through the enactment of Section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), as well as the implementing regulations at 30 CFR Part 585.

DATES: If you are submitting an indication of interest in acquiring a ROW grant for the area requested by AGH, your submission must be sent by mail, postmarked no later than February 21, 2012 for your submission to be considered. If you are providing comments or other submissions of information, you may send them by mail, postmarked by this same date, or you may submit them through the Federal Rulemaking Portal at *http://www.regulations.gov,* also by this same date.

Submission Procedures: This notice solicits: (1) Submission of competitive interest in obtaining a ROW grant for renewable energy purposes for the area identified in this notice; and (2) public input related to the proposal, its potential environmental consequences, and the use of the area in which the proposal would be located. If you are submitting an indication of competitive interest for a ROW grant, please submit your nomination by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. Submissions must be postmarked by February 21, 2012 to be considered by BOEM for the purposes of determining competitive interest. BOEM will list the parties that submit indications of competitive interest in the area requested by AWC, and describe the types of facilities proposed for the ROW, on the BOEM Web site after the 60-day comment period has closed.

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this notice entitled, ''Privileged or Confidential Information.'' BOEM will post all comments on regulations.gov unless labeled as confidential. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Comments and other submissions of information should be submitted as follows:

1. Comments may be submitted through the Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0023, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. Alternatively, comments may be submitted by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Mr. Wright Frank, Energy Program Specialist, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1325.

SUPPLEMENTARY INFORMATION:

Purpose of the RFCI

The OCS Lands Act requires BOEM to award leases, easements, and ROWs competitively, unless after public notice, BOEM determines there is no competitive interest (43 U.S.C. 1337(p)(3)). Responses to this public notice will allow BOEM to determine, pursuant to 30 CFR 585.306, whether or not there is competitive interest in acquiring the ROW area requested by AGH for the construction and installation of cables and associated facilities for the transmission of electricity from renewable energy projects. In addition, this notice provides an opportunity for interested stakeholders to comment on the AGH proposal, and any potential impacts the AWC project may have.

If, in response to this notice, BOEM receives one or more indications of competitive interest for offshore transmission development from qualified entities that compete with the proposed AWC ROW, it may decide to move forward with the ROW grant issuance process using competitive procedures pursuant to 30 CFR Part 585. However, if BOEM receives no competing nominations, BOEM may decide to move forward with the ROW grant issuance process using the non-competitive procedures contained in 30 CFR Part 585.

Should BOEM decide to issue a grant in the area, whether competitively or non-competitively, it will provide the public with additional opportunities to provide input pursuant to 30 CFR Part 585 and applicable law, such as the National Environmental Policy Act (NEPA).

Background

Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act by adding subsection 8(p), which authorizes the Secretary of the Interior to grant leases, easements, and ROWs on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations, to the Director of BOEM. On April 29, 2009, BOEM promulgated renewable energy regulations, at 30 CFR Part 585, which can be found at: *http://www.boem.gov/uploadedFiles/FinalRenewableEnergyRule.pdf.*

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

In July 2010, the President signed an Executive Order (EO) establishing the National Ocean Council. The EO establishes a comprehensive, integrated national policy for the stewardship of the oceans, our coasts and the Great Lakes. Where BOEM actions affect the ocean, the EO requires BOEM to take such action as necessary to implement this policy, the stewardship principles and national priority objectives adopted by the EO, and guidance from the National Ocean Council.

BOEM appreciates the importance of coordinating its planning endeavors with other OCS users and regulators and intends to follow principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council to inform its leasing processes. BOEM anticipates that continued coordination with the BOEM State Renewable Energy Task Forces will help inform comprehensive coastal and marine spatial planning efforts.

BOEM State Renewable Energy Intergovernmental Task Forces

BOEM has formed Renewable Energy Intergovernmental Task Forces to enhance coordination among relevant Federal agencies and potentially affected state, local and tribal governments throughout the leasing and grant issuance processes. On June 1, 2011, BOEM held a teleconference and Web conference with the New York, New Jersey, Delaware, Maryland, and Virginia Task Forces to discuss (1) the AWC proposal, (2) a draft of this **Federal Register** notice, and (3) the process that BOEM would use to process AGH's application. BOEM will continue to coordinate with these Task Forces as necessary and appropriate throughout the leasing and grant issuance process.

Determination of Competitive Interest

The first step in determining whether there is competitive interest under 30 CFR 585.307 will be the evaluation of indications of competitive interest for the ROW grant area requested by AGH to install cables and associated facilities for the transmission of electricity. At the conclusion of the comment period for this public notice, BOEM will review the submissions received, undertake a completeness review and qualifications review, and make a determination as to whether competitive interest exists.

Under BOEM's regulations at 30 CFR 585.302(b)(1), the rights accorded in a ROW grant do not prevent the issuance of other rights in the same area, provided that any subsequent ROW grant issued by BOEM in the area of a previously-issued ROW grant does not unreasonably interfere with activities approved under the previously-issued ROW grant. BOEM may find that competitive interest exists if it receives a proposal to acquire an OCS ROW grant that matches the proposed grant area.

In the event that BOEM determines that competitive interest exists, BOEM may decide to follow the process described in subpart B of BOEM's regulations at 30 CFR 585.220–.225 for the competitive issuance of leases.

If, after evaluating the responses to this notice, BOEM determines that there is no competitive interest in the proposed grant area, it may decide to proceed with the noncompetitive grant issuance process pursuant to 30 CFR 585.306(b), consulting with the applicable BOEM State Task Forces. BOEM would announce its finding in a **Federal Register** notice. Following that notice, BOEM would initiate National Historic Preservation Act (NHPA) Section 106 and Government-to-Government consultations. After BOEM has issued a Determination of No Competitive Interest, the applicant would be required to submit a General Activities Plan (GAP), as described in 30 CFR 585.306(b). Following the submission of a GAP, BOEM would initiate the National Environmental Policy Act (NEPA) process.

Whether following competitive or non-competitive procedures, BOEM will comply with the requirements of the NEPA, the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the NHPA, the Rivers and Harbors Act, the Clean Water Act, and other applicable Federal statutes prior to making a decision on whether or not to issue a grant and/or GAP approval, disapproval, or approval with modifications. In territorial waters, applicants will be responsible for compliance with additional Federal and state requirements. BOEM would coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, and affected state and local governments, in issuing a grant and developing grant terms and conditions.

Description of the Proposal

AGH proposes to build an offshore ''backbone'' electrical transmission system that would enable up to 7,000 megawatts (MW) of offshore wind turbine capacity to be delivered to the regional high-voltage grid controlled by PJM Interconnection, LLC. AGH is considering several project design options, one of which would also entail interconnection into the NYISO. The transmission system would be constructed on the OCS off the coasts of New York, New Jersey, Delaware, Maryland, and Virginia. When wind power generation is not functioning at full capacity, AGH proposes that the AWC facilities would transmit conventionally-generated electricity between points on the onshore grid.

The AWC project is proposed as a single integrated system, although it would be constructed in five phases. It is anticipated that, if fully developed, the ROW grant corridor would extend approximately 820 statute miles. Full construction would take approximately 10 years. The phases of the proposed development are described below:

- Phase A: The offshore facilities from southern New Jersey to Delaware with a capacity of up to 2,000 megawatts (MW) (about 80 statute miles);
- Phase B: The offshore facilities from southern New Jersey to the northern New Jersey/New York metropolitan area with a capacity of up to 1,000 MW (about 110 statute miles);
- Phase C: The offshore facilities from Maryland to the northern New Jersey/New York metropolitan area with a capacity of up to 2,000 MW (about 290 statute miles);
- Phase D: The offshore facilities from Maryland to Virginia with a capacity of up to 1,000 MW (about 175 statute miles); and
- Phase E: The offshore facilities from Delaware to Virginia with a capacity of up to 1,000 MW (about 165 statute miles).

The phases of the AWC system are intended to align with what AGH anticipates to be the timing of offshore wind generation development. The AWC project does not include any proposals for offshore wind energy generation facilities.

The proposal includes two fully-built circuits (Circuit 1 and Circuit 2), each installed within a separate offshore corridor. The corridors are separated to lessen the risk that a single event, such as an anchor drag, could damage both circuits. From the northernmost point of the proposal to Virginia, circuit 1 would be installed closer to shore—generally between 4 and 15 statute miles offshore—than circuit 2. However, circuit 1 would cross Circuit 2 offshore Virginia and would lie further offshore than circuit 2 at the southernmost part of the route. Circuit 2 would be installed further offshore than circuit 1, in the 6 to 20 statute mile range from northern New Jersey to the crossing of the circuits offshore Virginia. AGH is requesting a ROW grant that would also allow for another possible path in which Circuits 1 and 2 would not cross offshore Virginia, remaining parallel throughout the route (See map referenced in ''Map of the Area'' section, below).

In addition to the cable, AGH anticipates that the AWC system would have up to nine offshore converter platforms, which would receive electricity via cable from offshore renewable energy generation facilities. These platforms would convert high-voltage alternating current into HVDC using voltage sourced converters. Each offshore converter platform would connect to one of the two proposed circuits. The circuits would connect to the onshore transmission grid at up to seven locations where AWC terrestrial converter stations would convert the HVDC current to HVAC and connect to the grid. Interconnection is contemplated at Larrabee, New Jersey; Cardiff, New Jersey; Indian River, Delaware; and Piney Grove, Maryland. In Virginia, interconnections are planned at two of the following three potential interconnection points—one in Virginia Beach, and two more at Fentress, Virginia. In the northern New Jersey/New York metropolitan area, interconnection is planned at one of the following three interconnection points: Sewarren, New Jersey; Hudson, New Jersey; and Zone J on Long Island, New York. Each circuit of the project would contain three cables, two 320 kilovolt (kV) cables, and a fiber optic cable to provide communications and control capability. The two circuits together would require a total of four power cables, and two communication cables.

All cables would be buried to a depth that would likely be determined by factors such as the type of seafloor (hard bottom or soft bottom), the potential presence of sandwaves and sediment megaripples, and the marine uses that take place in a given cable area.

Description of the Area

The area under consideration is located on the OCS off the coasts of New York, New Jersey, Delaware, Maryland, and Virginia. A ROW grant is a corridor 200 feet in width centered on the cable or pipeline (30 CFR 585.301). The coordinates of the centerline for the ROW can be downloaded from the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.*

The ROW grant area requested by AGH consists of this centerline and an area 100 feet to either side. This area may be adjusted based on the results of future surveys or new information obtained from stakeholder outreach and public input. We request public comments and indications of competitive interest in the actual ROW area requested. The centerline of the ROW can be determined by interconnecting the points indicated by the centerline coordinates. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83. Coordinates for tentative offshore substation locations are also available from the web site indicated above.

Map of the Area

A map of the area proposed for a ROW grant can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.*

The application itself may also be downloaded from the Web site. A large scale map of the RFCI area showing boundaries of the area is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1320, Fax: (703) 787–1708.

Required Nomination Information

If you intend to submit an indication of competitive interest for a ROW grant for the area identified in this notice for the purposes of transmitting electricity from renewable energy facilities to shore, you must provide the following:

(1) Documentation demonstrating that you are legally qualified to hold a ROW grant as set forth in 30 CFR 585.106–.107. Guidance and examples of the documentation appropriate for demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of the BOEM Renewable Energy Framework Guide Book available at: *http://www.boemre.gov/offshore/renewableenergy/PDFs/REnGuidebook_03August2009_3_.pdf.*

Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that some part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see Protection

of Privileged or Confidential Information Section, below).

(2) Documentation demonstrating that you are technically and financially qualified to hold a lease as set forth in 30 CFR 585.106–107, including documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in (4), below. Guidance regarding the documentation that you may submit to demonstrate your technical and financial qualifications can be found at: *http://www.boemre.gov/offshore/RenewableEnergy/PDFs/QualificationGuidelines.pdf.*

(3) A statement that you wish to acquire a renewable energy ROW grant for the proposed grant area requested by AGH for the AWC project and a description of how your proposal would interfere with, or suffer interference from, the AWC proposed project. Any request for a ROW grant located outside of the proposed grant area should be submitted separately pursuant to BOEM's regulations at 30 CFR 585.305.

(4) A description of your objectives, including:

- Devices and infrastructure involved (if your project would require the use of offshore platforms, please indicate where those platforms would be located);
- Anticipated capacity;
- How the project would support renewable energy facilities; and
- A statement that the proposed activity conforms with state and local energy planning requirements, initiatives or guidance, as applicable.

(5) A schedule of proposed activities, including those leading to commercial operations; and;

(6) Available and pertinent data and information concerning environmental conditions in the area, including any energy and resource data and information used to evaluate the area. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system, (NAD 83).

Your complete nomination, including the items identified in (1) through (6) above, must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy.

It is critical that you provide a complete submission of competitive interest so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination in writing and describe the information that BOEM wishes you to provide in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to provide the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines your second submission is also insufficient, BOEM reserves the right to deem your submission invalid. In such a case, BOEM would not consider your submission.

Requested Information From Interested or Affected Parties

BOEM is also requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including bottom and shallow hazards) in the area described in this notice;

(2) Known archaeological, historic, and/or cultural resource sites on the seabed in the area described in this notice;

(3) Multiple uses of the area described in this notice, including navigation (in particular, commercial and vessel usage, recreation, and commercial and recreational fisheries);

(4) Potential impacts to existing communication cables;

(5) Department of Defense operational, training and testing activities (surface and subsurface) that occur in the area described in this notice that may be impacted by the proposed project;

(6) Impacts to potential future uses of the area;

(7) Advisable setback distance for other offshore structures, including other cables, renewable energy structures, oil and gas structures, etc.

(8) The potential risk posed by anchors or other factors, and burial depths that would be required to mitigate such risks;

(9) Other relevant environmental and socioeconomic information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information, ''Contains Confidential Information,'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential: (1) The legal title of the nominating entity (for example, the name of your company); or (2) the geographic location of nominated facilities and the types of those facilities. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA, 16 U.S.C. 470w–3, as confidential.

Dated: November 30, 2011.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2011–32277 Filed 12–20–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N226; FXHC–1113–0000–05D]

Proposed Safe Harbor Agreement for the Shasta Crayfish in Cassel, Shasta County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Michael, Melanie, and Paul Kerns (applicant) have applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival permit under the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed safe harbor agreement (agreement) between the

applicant and the Service for the federally endangered Shasta crayfish (*Pacifastacus fortis*). The agreement is available for public comment.

DATES: To ensure consideration, please send your written comments by January 20, 2012.

ADDRESSES: Send comments to Mr. Rick Kuyper, via U.S. mail at U.S. Fish and Wildlife Service, 13501 Franklin Boulevard, Galt, California 95632, or via email at *richard_kuyper@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 691–4531.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the document for review by contacting the individual named above. You may also make an appointment to view the document at the above address during normal business hours.

Background

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe harbor agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through safe harbor agreements are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). An enhancement of survival permit allows any necessary future incidental take of species above the mutually agreed upon baseline conditions for the species, as long as the take is in accordance with the terms and conditions of the permit and accompanying agreement. The federally endangered Shasta crayfish (*Pacifastacus fortis*) is also listed as endangered under the California Endangered Species Act, and the Service has worked closely with the California Department of Fish and Game during the development of this safe harbor agreement.

Proposed Safe Harbor Agreement for the Shasta Crayfish

The agreement would cover a 0.25-acre pond located on the applicant's property. The pond has no direct inflow or outflow from surface waterways and is fed by an isolated spring that flows from an extensive basalt lava flow. The water from the spring is ponded by a levee that was originally built in the early 20th century. Water flows out of the pond through a drain pipe into a ditch and then goes subsurface. Therefore, the pond has barriers both upstream and downstream that prevent species that predate on, or compete with, Shasta crayfish from entering. Currently, the pond does not contain Shasta crayfish, predatory species, or nonnative crayfish that would compete with the Shasta crayfish. Because the pond does not contain Shasta crayfish the baseline for the Agreement would be zero. Other native aquatic flora and fauna, which could be important for Shasta crayfish, are present and plentiful. The applicant would undertake some enhancement of the pond by placing rock substrate along certain areas of the pond's bottom to create refugia and foraging habitat for Shasta crayfish. Some incidental take of Shasta crayfish could occur in the future during routine maintenance of a water intake pipe on the south side of the pond.

Because all extant populations of Shasta crayfish are currently in rapid decline due to the presence of nonnative predators and competitors, the Service is working closely with the California Department of Fish and Game and others to determine the feasibility of relocating individual Shasta crayfish from existing populations to the applicant's pond to establish a new population. Once the safe harbor agreement is signed, the landowners will allow the Service to translocate individual Shasta crayfish from nearby populations to their pond. The pond would provide high-quality foraging and breeding habitat that is free of nonnative crayfish and predatory fish species, thus creating a high likelihood that the applicant's pond will support a self-sustaining population of Shasta crayfish throughout the duration of the safe harbor agreement. If Shasta crayfish are established in the applicant's pond, this population could potentially be used to repopulate extirpated populations in other suitable areas within the historic range of the species.

Upon approval of this agreement and satisfactory completion of all other applicable legal requirements, and consistent with the Service's Safe Harbor Policy (64 FR 32717), the Service would issue an Enhancement of Survival permit to the applicant. This permit will authorize the applicant to take the covered species incidental to the following: (1) Implementation of the management activities specified in the agreement; (2) other lawful uses of the property, including normal routine land management activities; and, (3) a return to baseline conditions, if desired by the applicant.

An applicant would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(c)(5) and 17.32(c)(5)) for all species included in the enhancement of survival permit. In addition to meeting other criteria, actions to be performed under an Enhancement of Survival permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

Public Review and Comments

The Service has made a preliminary determination that the proposed agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the Environmental Action Statement, and/or copies of the full text of the agreement, including a map of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

Before including your address, phone number, email 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 Service will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If the Service determines that the requirements are met, we will sign the proposed agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the applicant for take of the Covered Species incidental to otherwise lawful activities in accordance with the terms of the agreement. The Service will not make our final decision until after the

end of the 30-day comment period and will fully consider all comments received during the comment period.

Authority

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: December 14, 2011.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2011–32590 Filed 12–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000, L13100000.DB0000, LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

DATES: The meeting will be held January 31–February 2, 2012, in Fairbanks, Alaska. The meetings will begin at 9 a.m. in room 401, International Arctic Research Center (IARC) Building, 930 Koyukuk Drive, University of Alaska Fairbanks campus. Public comment will be received between 3 and 4 p.m. on Thursday, February 2, 2012.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or email *jpayne.blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions. This meeting will include a review of the development and scenario planning presented to the Oversight Group in October, additional assignments to the STAP to include recommendations for monitoring and discussion on cumulative analysis.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative. Before including your address, phone number, email 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.

Dated: December 14, 2011.

Bud C. Cribley,

State Director.

[FR Doc. 2011–32682 Filed 12–20–11; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000; HAG–12–0002; OR–47552]

Notice of Application for Proposed Withdrawal Extension and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Department of the Interior, Bureau of Land Management (BLM) to extend the duration of Public Land Order (PLO) No. 6944 for an additional 20-year term. PLO No. 6944 withdrew approximately 43.75 acres of National Forest System land from location and entry under the United States mining laws in order to protect the Granite Chinese Walls Historic Site. The withdrawal created by PLO No. 6944 will expire on September 30, 2012, unless extended. This notice also gives an opportunity to comment on the application and proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by March 20, 2012.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, 333 SW 1st Ave., P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, (503) 808–6155, or Dianne Torpin, USFS Pacific Northwest Region, (503) 808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to reach either of the named contacts during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting that the Secretary of the Interior extend the duration of PLO No. 6944 (57 FR 45321 (1992)), which withdrew 43.75 acres of National Forest System land from location and entry under the United States mining laws, but not leasing under the mineral leasing laws, for an additional 20-year term, subject to valid existing rights. PLO No. 6944 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the Federal recreation investment of the site along with the archaeological, cultural, and historic values of the Granite Chinese Walls Historic Site.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the extension application may be examined by contacting Michael L. Barnes at the above BLM address or phone number.

For a period until March 20, 2012, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Oregon/Washington State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours. Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by March 20, 2012.

Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–32607 Filed 12–20–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–1211–9104; 9865–PZS]

Agency Information Collection Activities: Proposed Information Collection for Community Harvest Assessments for Alaskan National Parks and Preserves

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we (the National Park Service) are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for a proposed new collection. This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this collection. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to comment on this ICR. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: To ensure that your comments on this ICR are considered, please submit them on or before January 20, 2012.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to *OIRA_DOCKET@omb.eop.gov* or fax at (202) 395–5806; and identify your submission as 1024–WRST. Please also send a copy your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email).

FOR FURTHER INFORMATION CONTACT: Barbara Cellarius, Ph.D., Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573; *barbara_cellarius@nps.gov* (email). You may access this ICR at *www.reginfo.gov.*

I. Abstract

The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. At the field level, this means resource preservation, public education, facility maintenance and operation, and physical developments that are necessary for public use, health, and safety.

National parks and preserves in Alaska created or expanded in 1980 under the Alaska National Interest Lands Conservation Act (ANILCA) provide the opportunity for qualified rural residents to harvest fish, wildlife, and other subsistence resources. Section 812 of ANILCA states, ''The Secretary [of the Interior], in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands.'' To develop resource management strategies for the parklands, the NPS needs information on harvest patterns among residents of communities with subsistence eligibility, resource distribution systems, and the impact of the changing rural economy on subsistence activities. A survey will be used to estimate subsistence harvests and to describe community subsistence economies. This project will survey residents of several communities in Wrangell-St. Elias National Park and Preserve and Gates of the Arctic National Park and Preserve on these topics. The surveyed communities have been designated as resident zone communities for the respective park in recognition that many residents of these communities have customarily and traditionally engaged in subsistence uses within a national park or monument. The resulting information will assist park managers in their subsistence management responsibilities and will also be of use to local and regional advisory councils in making recommendations and by the State of Alaska and the Federal Subsistence Board in making decisions regarding the management of fish and wildlife in the region.

II. Data

OMB Number: 1024–NEW.

Title: Community Harvest Assessments for Alaskan National Parks and Preserves.

Type of Request: NEW.

Affected Public: Individual households eligible to engage in subsistence hunting, fishing, trapping, and gathering under NPS and Federal Subsistence Program regulations in Gates of the Arctic and Wrangell-St. Elias National Parks and Preserves.

Respondent Obligation: Voluntary.

Estimated Annual Number of Respondents: 302 interviews; 336 non-response survey.

Estimated Time and frequency of Response: This is a one-time in-person interview estimated to take 60 minutes per respondent to complete. It is estimated that each respondent will take 10 minutes to complete the initial contact and a short non-response survey.

Estimated Total Annual Burden Hours: 358 hours.

III. Request for Comments

On August 5, 2011 we published a **Federal Register** notice (76 FR 47609) announcing that we would submit this

ICR to OMB for approval and soliciting comments. The comment period closed on October 4 2011. We received one comment expressing concern that residents of other states, such as New Jersey, did not have access to these resources. Under the provisions of ANILCA, only rural Alaska residents are qualified to engage in subsistence in Alaskan National Parks, Preserves and Monuments, and this survey responds directly to congressional direction to collect information on subsistence uses (ANILCA 812). The commenter also states that it is not necessary to conduct these surveys on an annual basis. We agree and are not proposing to do so. It has been 10+ years since these communities were last surveyed, and we feel that conducting surveys at an interval of 5 to 10 years between surveys of individual communities will provide adequate information for management while not unnecessarily burdening the public.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. All comments will become a matter of public record. While you can ask us in your comment to withhold personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 15, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–32635 Filed 12–20–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments for 1029–0040.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the requirements for permit applications for special categories of mining has been submitted to the Office of Management and Budget (OMB) for review and renewed approval. This information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 20, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via email to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this collection on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR Part 785 Requirements for permits for special categories of mining. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for 30 CFR Part 785 is 1029–0040. Responses are required to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for this collection of information was published on July 25, 2011 (76 FR 44357). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 785–Requirements for permits for special categories of mining.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of P.L. 95–87, which require applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coalmine permits and state regulatory authorities.

Total Annual Responses: 252 permit applicants and 252 state regulatory authorities.

Total Annual Burden Hours: 22,573.

Total Annual Non-Wage Costs: $0.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the offices listed in **ADDRESSES**. Please refer to OMB control number 1029–0040 in all correspondence.

Before including your address, phone number, email 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.

Dated: December 13, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–32362 Filed 12–20–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Third Review)]

Ferrovanadium and Nitrided Vanadium From Russia; Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2011, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 54490, September 1, 2011) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 15, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–32594 Filed 12–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–820]

Certain Products Containing Interactive Program Guide and Parental Controls Technology; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 15, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rovi Corporation of Santa Clara, California; Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International Inc.) of Santa Clara, California; United Video Properties, Inc. of Santa Clara, California; Gemstar Development Corporation of Santa Clara, California; and Index Systems, Inc. of Tortola, the British Virgin Islands. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing interactive program guide and parental controls technology by reason of infringement of certain claims of U.S. Patent No. 7,493,643 (''the '643 patent''); U.S. Patent No. RE41,993 (''the '993 patent''); U.S. Patent No. 6,701,523 (''the '523 patent''); and U.S. Patent No. 7,047,547 (''the '547 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 15, 2011, *ordered that* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products containing interactive program guide and parental controls technology that infringe one or more of claims 1, 3, 4,' 7–10, and 13–16 of the '643 patent; claims 18–21, 23–25, 30, 31, 38, 39, 41, 43, 44, 49, 56, 57, 59, 61, 62, and 67 of the '993 patent; claims 1–5, 7, 8, and 10–12 of the '523 patent; and claims 1, 2, 4, 6, 8, 10–14, 16–18, 20, 22, 24, 26–30, 32–34, 36, 38, 40, 42–46, 48–50, 52, 54, 56, 58–62, and 64 of the '547 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Rovi Corporation, 2830 De La Cruz Boulevard, Santa Clara, CA 95050.

Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International Inc.), 2830 De La Cruz Boulevard, Santa Clara, CA 95050.

United Video Properties, Inc., 2830 De La Cruz Boulevard, Santa Clara, CA 95050.

Gemstar Development Corporation, 2830 De La Cruz Boulevard, Santa Clara, CA 95050.

Index Systems, Inc., Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Vizio, Inc., 39 Tesla, Irvine, CA 92618.

Haier Group Corp., 1 Haier Road, Hi-Tech Zone, Qingdao, Shandong 266101, China.

Haier America Trading, LLC, 1356 Broadway, New York, NY 10018.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 16, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–32592 Filed 12–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–819]

Certain Semiconductor Chips With Dram Circuitry, and Modules and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 15, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Elpida Memory, Inc. of Tokyo, Japan and Elpida Memory (USA) Inc. of Sunnyvale, California. A supplement to the complaint was filed on December 5, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor chips with DRAM circuitry, and modules and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,150,689 (''the '689 patent''); U.S. Patent No. 6,635,918 (''the '918 patent''); U.S. Patent No. 6,555,861 (''the '861 patent''); U.S. Patent No. 7,659,571 (''the '571 patent''); U.S. Patent No. 7,713,828 (''the '828 patent''); U.S. Patent No. 7,495,453 (''the '453 patent''); and U.S. Patent No. 7,906,809 (''the '809 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docketing Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 15, 2011, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor chips with DRAM circuitry, and modules and products containing same that infringe one or more of claims 1–6, 8–11, and 15–18 of the '689 patent; claims 1–16 and 18–21 of the '918 patent; claims 1, 3, 4, and 9–14 of the '861 patent; claims 1, 3, and 4 of the '571 patent; claims 1, 5, and 6 of the '828 patent; claims 1, 15, and 27 of the '453 patent; and claims 1 and 2 of the '809 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Elpida Memory, Inc., Sumitomo Seimei Yaesu Bldg. 3F, 2–1 Yaesu 2-chome, Chuo-ku, Tokyo 104–0028, Japan.

Elpida Memory (USA) Inc., 1175 Sonora Court, Sunnyvale, CA 94086.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nanya Technology Corporation, No. 669, FuhShing 3RD, KueiShan, TaoYuan, Taiwan.

Nanya Technology Corporation, U.S.A., 5104 Old Ironsides Drive, Suite 113, Santa Clara, CA 95054.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 15, 2011.

By order of the Commission.

James R. Holbein.

Secretary to the Commission.

[FR Doc. 2011–32593 Filed 12–20–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 005–2011]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Modification of a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify in part its system of records entitled ''Telephone Activity Record System, JUSTICE/BOP–011.'' The system notice, which was last published in the **Federal Register**, 67 FR 16762 (Apr. 8, 2002), is now being modified.

The Bureau clarifies that the records contained in this system may be located at any authorized location, in addition to the Central Office, Regional Offices, any of the Federal Bureau of Prisons (Bureau) and/or contractor-operated correctional facilities. This clarification is made for accuracy, and to allow for the Bureau to store records at other locations, such as other Bureau administrative offices, or at authorized Department of Justice locations.

The Bureau is also adding two sections, i.e., Security Classification and the ''Disclosure to a Consumer Reporting Agency.''

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by January 20, 2012.

ADDRESSES: The public, Office of Management and Budget, and Congress are invited to submit comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile at (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Federal Bureau of Prisons, (202) 307–2105.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on the modified system of records.

Dated: November 30, 2011.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/BOP–011

SYSTEM NAME:

Telephone Activity Record System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, Federal Bureau of Prisons (Bureau) facilities, any location operated by a contractor authorized to provide computer, and/or telephone service to the BOP for inmate use, or any other authorized location. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

* * * * *

[FR Doc. 2011–32637 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 006–2011]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Modification of a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify in part its system of records entitled ''Inmate Electronic Message Record System, JUSTICE/BOP–013,'' last published in the **Federal Register**, 70 FR 69594 (Nov. 16, 2005), with a revision to the routine uses 72 FR 3410 (Jan. 25, 2007).

The Bureau is making the following modifications to the system notice: the ''System Location'' section—the Bureau deletes language relating to the pilot programs as they will be converted to normal programs in the near future. The Bureau also clarifies that records may be retained at any authorized location in addition to Bureau facilities and authorized contractor sites. In the ''Category of Records'' section, the Bureau clarifies that the system collects personal identification information of the message recipient, including postal address, as input by the inmate correspondent. This modification is necessary to accurately reflect the collection and use of information in this system. Also, in the ''Category of Records'' section, the Bureau clarifies that ''investigatory data'' can include background checks of correspondents or any other relevant information collected during an investigation by the Bureau or other law enforcement agency. Once more, this modification is necessary to accurately reflect the collection and use of information in this system. Finally, the Bureau adds the ''Security Classification'' section to the notice.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by January 20, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress are invited to submit comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile at (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Federal Bureau of Prisons, (202) 307–2105.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on the modified system of records.

Dated: November 30, 2011.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/BOP–013

SYSTEM NAME:

Inmate Electronic Message Record System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be retained at any of the Federal Bureau of Prisons (Bureau) facilities nationwide, at any location operated by a contractor authorized to provide computer and/or electronic message service to Bureau inmates, or at any other authorized location. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Personal identification data; (2) time usage data; (3) electronic message data, including date and time of each electronic message; the name and register number of the inmate who sent the electronic message; personal information of the message recipient, including postal address; and the electronic address of the message recipient and his/her relationship to the inmate, digital and compact disc recordings of electronic messages; and (4) investigatory data, which includes any background checks of correspondents or any other relevant information collected during an investigation by the BOP or other law enforcement agency, developed internally as well as any related data collected from federal, state, local, tribal and foreign law enforcement agencies, and from federal and state probation and judicial officers.

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[FR Doc. 2011–32638 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on November 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ANSYS, Inc., Lebanon, NH; Emerson Process Management LLP, Glen Allen, VA; Honeywell Process Solutions Division of Honeywell International, Phoenix, AZ; New Mexico Computing Applications Center (NMCAC), Albuquerque, NM; Osterhout Design Group, San Francisco, CA; Pacific Northwest Defense Coalition (PNDC), Portland, OR; and University of California (UCLA), Los Angeles, CA, have been added as parties to this venture.

Also, Aerowing, Inc., Las Vegas, NV; Centerline (Windsor) Limited, Windsor, Ontario, CANADA; Geotest-Marvin Test Systems, Inc., Irvine, CA; Milspray Military Technologies, Lakewood, NJ; and Seica, Inc., Salem, NH, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 27, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 23, 2011 (76 FR 59162).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32693 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on November 28, 2011, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, College voor Examens, Utrecht, THE NETHERLANDS; K12.com, Herndon, VA; and Kaplan Global Solutions, Ft. Lauderdale, FL, have been added as parties to this venture.

Also, Inclusive Design Research Center, Toronto, Ontario, CANADA; Accessible Portable Item Profile—Nimble Tools, Newton, MA; Capella University, Minneapolis, MN; CCKF, Dublin, IRELAND; and Digital University Network (DUNET), Seoul, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on September 6, 2011. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on October 13, 2011 (76 FR 63659).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32699 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on November 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mangin, Inc., Arroyo Grande, CA; NorthStar Group, LLC, Washington, DC; and Association for Enterprise Integration, Arlington, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on August 31, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2011 (76 FR 63659).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32702 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Photovoltaic Manufacturing Consortium, Inc.

Notice is hereby given that, on November 14, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), U.S. Photovoltaic Manufacturing Consortium, Inc. (''USPVMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: SEMATECH, the Research Foundation of State University of New York (''Foundation''), Albany, NY, acting on behalf of the College of Nanoscale Science and Engineering (''CNSE'') of the University at Albany, State University of New York (''UAlbany''), Albany, NY; and University of Central Florida (''UCF''), Orlando, FL.

The general area of USPVMC's planned activity is to address the pre-competitive research and development, and the manufacturing collaboration to accelerate the commercialization of next generation photovoltaic systems.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32709 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on November 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Robotics Technology Consortium, Inc. (''RTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Engineering, LLC, Lakewood, CO; AutonomouStuff, LLC, Metamora, IL; Bolduc Technology Group, LLC, Augusta, ME; KT–Tech, Inc., Bowie, MD; Mechatron Inc., Somerville, MA; Northport Systems LLC, Toronto, Ontario, CANADA; and UrsaNav, Inc., Chesapeake, VA, have been added as parties to this venture.

Also, 3M Company, St. Paul, MN; Advanced Machining, Inc., Longmont, CO; Aerius Photonics, LLC, Ventura, CA; Delta Information Systems, Inc., Horsham, PA; DRS Sensors & Targeting Systems, Inc., Cypress, CA; EMSolutions, Inc., Arlington, VA; Jaybridge Robotics, Cambridge, MA; Klett Consulting Group, Inc., Virginia Beach, VA; and Next Wave Systems, LLC, New Pekin, IN, have withdrawn from this venture.

In addition, Mesa Robotics Inc. has changed its name to Mesa Technologies, Inc., Madison, AL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RTC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, RTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on July 27, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 22, 2011 (76 FR 59160).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32703 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on November 23, 2011, pursuant to Section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fortex Blucore Limited, Kowloon Bay, Hong Kong, HONG KONG–CHINA, and S&O Electronics (Malaysia) Sdn. Bhd, Kedah Darul Aman, MALAYSIA, have been added as parties to this venture.

Also Challenge Technology (Hong Kong) Limited, Kwun Ton, HONG KONG–CHINA; Eizo Nano Corporation, Ishikawa, JAPAN; Nintendo Co., Ltd., Kyoto, JAPAN; Novatron Co., Ltd., Gyeonggi-do, REPUBLIC OF KOREA; and Vtrek Electronics Co., Ltd., Guangzhou City, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 26, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 24, 2011 (76 FR 65749).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32700 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. d/b/a International Sematech

Notice is hereby given that, on November 18, 2011, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''Sematech, Inc.'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aixtron SE, Herzogenrath, GERMANY; Applied Seals North America, Inc., Newark, CA; Tokyo OHKA Kogyo Co., Ltd., Kanagawa-ken, JAPAN; Core Wafer Systems, Inc., Albuquerque, NM; Dainippon Screen Manufacturing Co., Ltd., Kyoto, JAPAN; Soitec, Bernin, FRANCE; Macronix International Co., Ltd., Hsinchu, TAIWAN; Global Foundaries Inc., Milpitas, CA; Freescale Semiconductor, Inc., Austin, TX; Infineon Technologies AG, Munich, GERMANY; Qualcomm Incorporated, San Diego, CA; LSI Corporation, Milpitas, CA; Spansion Inc., Sunnyvale, CA; Advanced Micro Devices, Inc., Sunnyvale, CA; Cypress Semiconductor Corporation, San Jose, CA; NXP Semiconductors N.V., Eindhoven, THE NETHERLANDS; ON Semiconductor Corporation, Phoenix, AZ; and STMicroelectronics N.V., Geneva, SWITZERLAND, have been added as parties to this venture.

Also, Canon Anelva Corporation, Kanagawa, JAPAN; Lasertec Corporation, Yokohama, JAPAN; Nanosys Inc., Palo Alto, CA; and Rudolph Technologies Inc., Flanders, NJ, have withdrawn as parties to this venture.

International Sematech Manufacturing Initiative, Inc. (''ISMI'') has an additional membership category called council membership. ISMI offers and manages a number of councils which are forums for semiconductor industry managers to benchmark operations, share best practices, hear expert presentations, hold workshops on topics of interests, influence/supply chain, and network. These ISMI councils focus on wafer fab operations, procurement and logistics, quality and reliability, and final manufacturing.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Sematech, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, Sematech, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on November 15, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 4, 2011 (76 FR 70758).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32697 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0170]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Crime Victim Compensation State Certification Form Request

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OBM) 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 February 21, 2012. The 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 DeLano Foster at (202) 616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531.

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 agencies 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:* Reinstatement, without change, of a previously approved collection of which approval has expired.

(2) *Title of the form/collection:* Crime Victim Compensation State Certification Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The agency form number is 7390/5 and U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government VOCA administrators.

(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 53 respondents will complete the form within approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 53 total hour burden hours associated with this collection.

If additional information is required contact: Mrs. Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–32550 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1576]

Meeting of the Office of Justice Programs' Science Advisory Board; Meeting

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a forthcoming meeting of OJP's Science Advisory Board (''Board''). *General Function of the Board:* The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice. To this end, the Board has designated five (5) subcommittees: National Institute of Justice (NIJ); Bureau of Justice Statistics (BJS); Office of Juvenile Justice and Delinquency Prevention (OJJDP); Quality and Protection of Science; and Evidence Translation/Integration.

DATES: The meeting will take place on Friday, January 20, 2012, from 8:30 a.m. EST to 4 p.m. EST with a break for lunch at approximately noon.

ADDRESSES: The meeting will take place in the Main Conference Room, third floor, of the Office of Justice Programs at 810 7th Street Northwest, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Marlene Beckman, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; Phone: (202) 616–3562 [**Note:** this is not a toll-free number]; Email: *marlene.beckman@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being convened to brief the OJP Assistant Attorney General and the Board members on the progress of the subcommittees, and discuss any recommendations they may have for consideration by the full SAB. The final agenda is subject to adjustment, but it is anticipated that there will be a morning session and an afternoon session, with a break for lunch. These sessions will likely include briefings of the subcommittees' activities and discussion of future SAB actions and priorities.

This meeting is open to the public. Members of the public who wish to attend this meeting must register with Marlene Beckman at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Beckman at least seven (7) days in advance of the meeting.

Marlene Beckman,

Counsel and SAB DFO, Office of the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2011–32556 Filed 12–20–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,031]

Time-O-Matic, Inc., a Subsidiary of Watchfire Holding Company, Watchfire Enterprises, Inc., Including On-Site Leased Workers From Manpower, Trillium Staffing, Select Remedy, and Westaff, Danville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 28, 2011, applicable to workers of Time-O-Matic, Inc., a subsidiary of Watchfire Holding Company, Watchfire Enterprises, Inc., including on-site leased workers of Manpower and Trillium Staffing, Danville, Illinois. The workers produce outdoor advertising signs, such as light emitting diode (L.E.D.) message centers and billboards. The notice was published in the **Federal Register** on March 17, 2011 (76 FR 14692).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Select Remedy and Westaff were employed on-site at the Danville, Illinois location of Time-O-Matic, Inc., a subsidiary of Watchfire Holding Company, Watchfire Enterprises, Inc. The Department has determined that these workers were sufficiently under the control of Time-O-Matic, Inc., a subsidiary of Watchfire Holding

Company, Watchfire Enterprises, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Select Remedy and Westaff working on-site at the Danville, Illinois location of Time-O-Matic, Inc., a subsidiary of Watchfire holding Company, Watchfire Enterprises, Inc.

The amended notice applicable to TA–W–75,031 is hereby issued as follows:

All workers of Time-O-Matic, Inc., a subsidiary of Watchfire Holding Company, Watchfire Enterprises, Inc., including on-site leased workers from Manpower, Trillium Staffing, Select Remedy, and Westaff, Danville, Illinois, who became totally or partially separated from employment on or after December 21, 2009, through February 28, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 12th day of December, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32610 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,158]

Penske Logistics, LLC, Customer Service Department General Motors and Tier Finished Goods/Finished Goods Division; a Subsidiary of General Electric/Penske Corporation Including On-Site Leased Workers From Kelly Temporary Services and Manpower El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 1, 2010, applicable to workers of Penske Logistics, LLC, Customer Service Department, a subsidiary of General Electric/Penske Corporation, including on-site leased workers from Kelly Temporary Services and Manpower. The workers are engaged in the supply of customer service. The notice was published in the **Federal Register** on March 10, 2011 (76 FR 13233).

At the request of the Texas Workforce Agency, the Department reviewed the certification for workers of the subject firm.

New information shows that the Department did not identify the worker group department of the subject firm name in its entirety on the certification decision. The correct name of the worker group department of the subject firm should read Penske Logistics, LLC, Customer Service Department, General Motors and Tier Finished Goods/Finished Goods Division.

Accordingly, the Department is amending this certification to correct the name of the subject firm to read Penske Logistics, LLC, Customer Service Department, General Motors and Tier Finished Goods/Finished Goods Division.

The amended notice applicable to TA–W–75,158 is hereby issued as follows:

All workers of Penske Logistics, LLC, Customer Services Department, General Motors and Tier Finished Goods/Finished Goods Division, a subsidiary of General Electric/Penske Corporation, including on-site leased workers from Kelly Temporary Services and Manpower, El Paso, Texas, who became totally or partially separated from employment on or after January 31, 2010, through February 23, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 8th day of December 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–32614 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,072]

Android Industries Belvidere, LLC, Including On-Site Leased Workers From QPS Employment Group, Spherion Corporation, and Staff on Site, Belvidere, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 1, 2010, applicable to workers of Android Industries Belvidere, LLC, including on-site leased workers from QPS Employment Group and Spherion Corporation, Belvidere, Illinois. The workers produce engines and instrument panels for automobiles. The notice was published in the **Federal Register** on July 16, 2010 (75 FR 41526).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Staff on Site were employed on-site at the Belvidere, Illinois location of Android Industries Belvidere, LLC. The Department has determined that these workers were sufficiently under the control of Android Industries Belvidere, LLC to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Staff on Site working on-site at the Belvidere, Illinois location of Android Industries Belvidere, LLC.

The amended notice applicable to TA–W–73,072 is hereby issued as follows:

All workers of Android Industries, Belvidere, LLC, including on-site leased workers from QPS Employment, Spherion Corporation and Staff on Site, Belvidere, Illinois, who became totally or partially separated from employment on or after December 9, 2008, through July 1, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 12th day of December 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32611 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of December 5, 2011 through December 9, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,089	Catawba Valley Finishing, LLC	Newton, NC	February 13, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,458	TeleTech Transition Services LLC, TeleTech Transition Corporation, Former Workers of Clearwire Wireless.	Las Vegas, NV	September 19, 2010.
80,480	Elsevier, Inc., Editorial Production-Journals Division, Randstad	San Diego, CA	September 28, 2010.
80,535	Cooper US, Inc., Bussman Division, Megaforce Staffing, McCain Employment Services, etc..	Goldsboro, NC	October 19, 2010.
81,002	GFSI, Inc., D/B/A GEAR For Sports	Chillicothe, MO	February 13, 2010.
81,003	BNY Mellon Investment Servicing (US) Inc., Bank of New Year Mellon, Aardvark Systems and Programming, etc..	Pawtucket, RI	February 13, 2010.
81,012	Maersk Agency USA Line, A.P. Moller Maersk, Customer Service Division, Tempfinders Personnel.	The Woodlands, TX	February 13, 2010.
81,012A	Maersk Agency USA Line, A.P. Moller Maersk, Customer Service Division, REXX and Remote Workers.	Miami, FL	February 13, 2010.
81,012B	Maersk Agency USA Line, A.P. Moller Maersk, Customer Service Division.	Charlotte, NC	February 13, 2010.
81,032	Hampton Lumber Mills—Washington, Inc., Darrington Division	Darrington, WA	August 19, 2011
81,059.	Suntec Industries, Inc.	Glasgow, KY	December 13, 2010.
81,065	ITT Veam, LLC., Interconnect Solutions, Kelly Services, UI Wages ITT Corporation.	Watertown, CT	February 13, 2010.
81,077	Maida Development Company, Integrity Staffing Services, Inc.	Hampton, VA	June 27, 2011.
81,082	Motorola Solutions, Inc., iDen Engineering Division	Schaumburg, IL	February 13, 2010.
81,101	Cequent Performance Products, Trimas Corporation, Manpower, Inc..	Tekonsha, MI	February 13, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,536	Fortis Plastics, LLC	Fort Smith, AR	September 29, 2011.
81,053	KFP Corporation, Leased Workers from Spherion	Somerset, PA	February 13, 2010.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
81,027	The Wise Company, Inc	Rector, AR	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
81,013	Maersk Agency, USA Inc., A.P. Moller Maersk, Remote Workers Across Viriginia Report to Miami.	Miami, FL	
81,014	Maersk Agency, USA Inc., A.P. Moller Maersk, Customer Services Division, Rexx.	Charlotte, NC	

I hereby certify that the aforementioned determinations were issued during the period of December 5, 2011 through December 9, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa search form.cfm* under searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 13, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32613 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of December 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[22 TAA petitions instituted between 11/28/11 and 12/2/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81111	Ametek National Controls (Company)	West Chicago, IL	11/28/11	11/23/11
81112	MMICMAN (Company)	Clearwater, FL	11/28/11	11/24/11
81113	The Gillette Co. (subsidiary of the Procter & Gamble Co.) (Company).	Boston, MA	11/28/11	11/17/11
81114	Plum Choice (also possibly Balance Staffing & Insight Staffing) (State/One-Stop).	Scarborough, ME	11/28/11	11/22/11
81115	The Rupp Forge Company (Company)	Cleveland, OH	11/29/11	10/10/11
81116	Clariant Corp (Company)	Martin, SC	11/29/11	11/29/11
81117	Sykes Enterprise Inc., Re: Aaron Troxel; Teleworker; Reporting to Tampa, FL (State/One-Stop).	Grand Junction, CO	11/29/11	11/28/11
81118	Matrix IV (State/One-Stop)	Huntley, IL	11/29/11	11/28/11
81119	Federal—Mogul (Company)	Michigan City, IN	11/29/11	11/09/11
81120	Euclid Industries Inc. (Worker)	Bay City, MI	11/29/11	11/15/11
81121	Third Degree Graphics & Marketing (Workers)	Ventura, CA	11/29/11	11/21/11
81122	Siemens Energy, Inc. (Union)	Pittsburgh, PA	11/30/11	11/29/11
81123	Dana Holding Corporation (Company)	Marion, IN	11/30/11	11/30/11
81124	Asheville Drafting Services, Inc. (Company)	Henderson-ville, NC	11/30/11	11/23/11
81125	1SolTech (Company)	Farmers Branch, TX	12/01/11	11/30/11
81126	Argo Group International Holdings, Ltd (Portland Office) (Workers).	Milwaukie, OR	12/01/11	11/30/11
81127	Western Union (State)	Englewood, CO	12/01/11	12/01/11
81128	MedQuist (State/One-Stop)	Franklin, TN	12/01/11	11/30/11
81129	Job 1 USA Security (State/One-Stop)	Albany, GA	12/02/11	11/22/11
81130	Superior Plating (State/One-Stop)	Minneapolis, MN	12/02/11	12/01/11
81131	Topsail Coast Enterprises, Inc. (Company)	Surf City, NC	12/02/11	12/01/11
81132	Narrow Fabric Industries (Workers)	West Reading, PA	12/02/11	11/30/11

[FR Doc. 2011–32615 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,063; Stream International, Inc., Richardson, TX.

TA–W–80,350; Baby Bliss, Inc., Middleville, MI.

TA–W–80,362; Rocktenn, Williamsport, PA.

TA–W–80,423; Allstate Insurance Company, Northbrook, IL.

I hereby certify that the aforementioned negative determinations on reconsideration were issued on December 2, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 7, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32617 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,066; Ivex Packaging Paper, LLC, Joliet, IL.

TA–W–80,074; AES Westover, Johnson City, NY.

I hereby certify that the aforementioned negative determinations on reconsideration were issued on December 9, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 13, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32619 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,126; Ryder Integrated Logistics, Highland Park, MI: April 21, 2010.

TA–W–80,240; Pearson Education, Inc., Old Tappan, NJ: June 16, 2010

TA–W–80,269; Crocs, Inc., Niwot, CO: July 1, 2010

TA–W–80,280; Client Services, Inc., Denison, TX: July 11, 2010

TA–W–80,367; Certegy Check Services, Inc., St. Petersburg, FL: August 8, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on December 9, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office

of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 13, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32618 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of *February 13, 2011 through October 21, 2011.* Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,015; ACS Commercial Solutions, Inc., Liberty, KY: February 2, 2010.

TA–W–80,228; Continental Casualty Co., Chicago, Il: June 10, 2010.

TA–W–80,275; Pfizer Therapeutic Research, Groton, CT: July 8, 2010.

TA–W–80,290; MGM Resorts International, Las Vegas, NV: July 14, 2010.

TA–W–80,301; Capgemini America, Inc., Lee's Summit, MO: July 18, 2010.

TA–W–80,329; DHL Express, Houston, TX: July 29, 2010.

TA–W–80,341; Hartford Financial Services, Inc., Hartford, CT: July 27, 2010.

TA–W–80,431; Covidien, Argyle, NY: September 11, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on *December 2, 2011.* These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated December 12, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32616 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,147]

Travelers Insurance, a Subsidiary of the Travelers Indemnity Company, Personal Insurance Division, Account Processing/Underwriting, Syracuse, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 4, 2011 on behalf of workers of Travelers Insurance, a subsidiary of The Travelers Indemnity Company, Personal Insurance Division, Account Processing/Underwriting Group, Syracuse, New York. On August 31, 2011, the Department issued an amended certification of TA–W–75,232A that included workers and former workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing/Underwriting Unit, Syracuse, New York, who were totally or partially separated or threatened with such separation from February 10, 2010 through March 25, 2013. On September 15, 2011, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration, stating that the workers were eligible to apply for worker adjustment assistance under TA–W–75,232A.

As required by the Trade Adjustment Assistance (TAA) Extension Act of 2011 (the TAAEA), the investigation into this petition was reopened for a reconsideration investigation to apply the requirements for worker group eligibility under chapter 2 of title II of the Trade Act of 1974, as amended by the TAAEA, to the facts of this petition.

The worker group on whose behalf the petition was filed is covered under an existing certification (TA–W–75,232A) which expires on March 25, 2013. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of December, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–32612 Filed 12–20–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–119)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed Fran Teel, Office of the Chief Information Officer, Mail Suite 2U74, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Fran Teel, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite 2U74, Washington, DC 20546, (202) 358–2225, *frances.c.teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this project is to assess if National Park Service (NPS) visitors, as well as visitors to other public lands, are benefiting from an interagency partnership, known as Earth to Sky, by

measuring awareness and understanding of global climate change in visitors to NPS and other public land locations. An on-site survey will be administered to park visitors to assess their awareness and understanding of global climate change; meaning of and connection to park resources; and perception of trust in sources of information regarding global climate change. Data will be collected in a variety of NPS and other sites. Results will help NASA and other managers of the Earth to Sky partnership assess the success of the partnership efforts and help refine and encourage the continued collaboration.

II. Method of Collection

An on-site survey will be administered to visitors in order to collect the data.

III. Data

Title: An assessment of global climate change in visitors to National Park Service sites and other public lands.

OMB Number: 2700–0146.

Type of Review: Renewal.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: Voluntary.

Estimated Total Annual Burden Hours: 322.5.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Fran Teel,

NASA PRA Clearance Officer.

[FR Doc. 2011–32605 Filed 12–20–11; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2011–0287]

Exemption Request Submitted by Oyster Creek Nuclear Generating Station; Exelon Generation Company, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix E, Section IV.F.2.c, ''Training,'' for Renewed Facility Operating License No. DPR–16, to delay the requirement to perform the biennial Emergency Preparedness (EP) exercise to June 2012, as requested by Exelon Generation Company, LLC (the licensee), for operation of the Oyster Creek Nuclear Generating Station (Oyster Creek), located in Ocean County, New Jersey. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment (EA). Based on the results of the EA, the NRC is issuing a finding of no significant impact.

II. EA Summary

Identification of the Proposed Action

The proposed action would grant an exemption to 10 CFR Part 50, Appendix E, Section IV.F.2.c to delay the requirement to perform the biennial EP exercise to June 2012. Currently, the licensee is required to complete the exercise by the end of calendar year (CY) 2011. The proposed action is in accordance with the licensee's application dated September 30, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112730283).

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix E, was submitted due to the impact of Hurricane Irene on the availability of the State of New Jersey county and local government resources. Due to widespread damage and flooding throughout the area, significant resource commitments were needed from the New Jersey State Office of Emergency Management (OEM), the Ocean County OEM, numerous other State departments, and the Division of State Police. As a result, the necessary participants from State agencies will be unavailable to participate in the exercise by the end of CY 2011. By letter dated August 31, 2011,[1] the Federal Emergency Management Agency (FEMA) agreed to postpone its evaluation of the exercise until June 2012.

Environmental Impacts of the Proposed Action

If the requested exemption were to be approved by the Nuclear Regulatory Commission (NRC), the full participation FEMA-evaluated biennial emergency exercise would not be conducted until June of 2012. Changing the date of the exercise does not alter the way the drill will be performed, and therefore, does not alter any environmental impacts that would be incurred by performance of the drill (e.g., use of roads or highways). Delaying performance of the exercise does not change any facility equipment or operations. Thus, the proposed action would not significantly increase the probability or consequences of an accident, create a new accident, change the types or quantities of radiological effluents that may be released offsite, result in a significant increase in public or occupational radiation exposure.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Oyster Creek and NUREG–1437, Vol. 1, Supplement 28, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear Generating Station, Final Report—Main Report,'' published in January 2007.

Agencies and Persons Consulted

In accordance with its stated policy, on December 9, 2011, the NRC staff consulted with the New Jersey State official for the Department of Environmental Protection regarding the environmental impact of the proposed

[1] This letter was not submitted directly to the NRC, but is included as Attachment 3 to the licensee's exemption request.

action. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 30, 2011. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–(800) 397–4209 or (301) 415–4737, or send an email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of December 2011.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–32645 Filed 12–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018 and 52–019; NRC–2008–0170]

Combined Licenses at William States Lee III Nuclear Station Site, Units 1 and 2; Duke Energy Carolinas, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; public meeting and request for comments.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), Charleston District, have published NUREG–2111, ''Draft Environmental Impact Statement for Combined Licenses (COL) for William States Lee III Nuclear Station Units 1 and 2 [Lee Nuclear Station].'' The NRC plans to hold a public meeting to present an overview of the draft Environmental Impact Statement (EIS) and accept public comments.

DATES: Submit comments by March 6, 2012. The NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSEES: Please include Docket ID NRC–2008–0170 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0170. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directive Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-(800) 397–4209, (301) 415–4737, or via email to *pdr.resource@nrc.gov*. The draft EIS is available electronically under ADAMS Accession Number ML113430094.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0170.

In addition, the draft EIS can be accessed online at the NRC's William States Lee III Nuclear Site Web page at *http://www.nrc.gov/reactors/new-reactors/col/lee.html*. The Cherokee County Public Library, 300 E. Rutledge Avenue, Gaffney, SC 29340, has also agreed to make the draft EIS available to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopas, Project Manager, Environmental Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1147; email: *Sarah.Lopas@nrc.gov*.

Background

The Lee Nuclear Station Site is located in Cherokee County, South Carolina. The application for the COLs was submitted by letter dated December 12, 2007, pursuant to Title 10 of the *Code of Federal Regulations,* Part 52. A notice of receipt and availability of the application, which included the environmental report, was published in the **Federal Register** on January 28, 2008 (73 FR 6218). A notice of acceptance for docketing of the COL application was published in the **Federal Register** on February 29, 2008 (73 FR 11156). A notice of intent to prepare a draft environmental impact statement (EIS) and to conduct the scoping process was published in the **Federal Register** on March 20, 2008 (73 FR 15009). A notice of intent to conduct a supplemental scoping process for the supplement to the environmental report was published in the **Federal Register** on May 24, 2010 (75 FR 28822).

Public Meeting

The NRC staff will hold two public meetings to present an overview of the draft EIS and to accept public comments on the document on Thursday, January 19, 2012, at Restoration Church International, 1905 N. Limestone Street, Gaffney, SC 29340. The first meeting will convene at 1 p.m. and will continue until 4 p.m., as necessary. The second meeting will convene at 7 p.m., with a repeat of the overview portions of the first meeting, and will continue until 10 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft EIS; and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. To be considered, comments must be provided during the transcribed public meeting either orally or in writing. Additionally, the NRC and USACE staff will host informal discussions one hour before the start of each meeting during which members of the public may meet and talk with staff members on an informal basis. No formal comments on the draft EIS will be accepted during the informal discussions.

Persons may pre-register to attend or present oral comments at the meetings by contacting Ms. Sarah Lopas by telephone at 1 (800) 368–5642, extension 1147, or via email to *Sarah.Lopas@nrc.gov* no later than January 17, 2012. Members of the public may also register to speak at the meetings within 15 minutes of the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. If special equipment or accommodations are needed to attend or present information at the public meetings, the need should be brought to Ms. Sarah Lopas's attention no later than January 12, 2012, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

The meeting agendas will be available on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* no later than 10 days prior to the meetings. Any changes to the meeting agendas will be available on the NRC's Public Meeting Schedule.

Dated at Rockville, Maryland, this 12th day of December, 2011.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–32649 Filed 12–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352–LR, 50–353–LR; [ASLBP No. 12–916–04–LR–BD01]

Exelon Generation Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Exelon Generation Company, LLC (Limerick Generating Station, Units 1 and 2)

This proceeding involves an application by Exelon Generation Company, LLC to renew for twenty years its operating licenses for Limerick Generating Station, Units 1 and 2, which are located In Limerick, Pennsylvania. The current Unit 1 and Unit 2 operating licenses expire on October 26, 2024, and June 22, 2029, respectively. In response to a Notice of Opportunity for Hearing published in the **Federal Register** on August 24, 2011 (76 FR 52,992), a request for hearing was filed on November 22, 2011 by the Natural Resources Defense Council.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. William E. Kastenberg, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 15th day of December 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–32640 Filed 12–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on January 19–20, 2012, 11545 Rockville Pike, Rockville, Maryland.

Thursday, January 19, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Turkey Point Units 3 and 4 Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power & Light regarding Turkey Point Units 3 and 4 Extended Power Uprate Application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–12:15 p.m.: Proposed Revision to 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revision to 10 CFR 50.46 regarding fuel cladding integrity during loss of coolant accidents.

1:15 p.m.–2:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss

organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:45 p.m.–3 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

3:15 p.m.–4:15 p.m.: Draft Final Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will hold a discussion on the draft final report on the biennial ACRS review of the NRC Safety Research Program.

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C 552b(c)(4).]

Friday, January 20, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Augmented Inspection Team Report on North Anna (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Augmented Inspection Team Report on the North Anna Nuclear Power Station, following the August 23, 2011, earthquake centered near Mineral, VA.

10:15 a.m.–2:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C 552b(c)(4).]

2:30 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011 (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Mr. Antonio Dias, Cognizant ACRS Staff (Telephone: (301) 415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–(800) 397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician ((301) 415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

If attending this meeting please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security please contact Mr. Theron Brown (240) 888–9835 to be escorted to the meeting room.

Dated: December 15, 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–32641 Filed 12–20–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9285; 34–65984, File No. 265–27]

Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of SEC Advisory Committee on Small and Emerging Companies.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public telephone meeting on Friday, January 6, 2012, beginning at 1 p.m. Members of the public may attend the meeting by listening to the Webcast accessible on the Commission's Web site at *www.sec.gov.* Persons needing special accommodations to access the meeting because of a disability should notify the contact person listed below. The agenda for the meeting includes consideration of a recommendation to the Commission on relaxing current restrictions on general solicitation and advertising in exempt offerings of securities. The Committee may also discuss written statements received and other matters of concern. The public is invited to submit written statements for the meeting, including any comments.

DATES: Written statements should be received on or before Wednesday, January 4, 2012.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–27 on the subject line; or

Paper Statements

• Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site at *http://www.sec.gov./info/smallbus/acsec.shtml.*

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, § 10(a), and the regulations thereunder, Meredith B. Cross, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: December 15, 2011.

Elizabeth M. Murphy,

Committee Management Officer.

[FR Doc. 2011–32575 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65966; File No. SR–BX–2011–083]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 15, 2011.

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 2, 2011, NASDAQ OMX BX, Inc. (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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 33 (Penny Pilot Program) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to extend, through June 30, 2012, the pilot program that permits certain classes to be quoted in penny increments on BOX (''Penny Pilot Program'').

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 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 extend the effective time period of the Penny Pilot Program on BOX that is currently scheduled to expire on December 31, 2011, for an additional six months, through June 30, 2012.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments on BOX. The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, SPY and IWM, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs, SPY and IWM, will continue to be quoted in $0.01 increments for all options series. The Exchange is not currently proposing any changes to the classes included within the Penny Pilot Program.

The Exchange may replace any Pilot Program classes that have been delisted on the second trading day following January 1, 2012. The replacement classes will be selected based on trading activity for the six month period beginning June 1, 2011, and ending November 30, 2011. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program. Since the Exchange is not adding classes other than the replacement classes in the manner described above, the Exchange is proposing to delete the following language: ''[t]he Exchange will specify which classes shall be included in the Penny Pilot Program by way of Regulatory Circular filed with the Commission pursuant to Rule 19b-4 under the Exchange Act and distributed to Participants'', as this language is no longer necessary.

Further, BOX agrees to submit to the Commission such reports regarding the Penny Pilot Program as the Commission may request. Such reports may include: (1) data and analysis on the number of quotations generated for options included in the Pilot Program; (2) an assessment of the quotation spreads for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot Program has been in effect on BOX since January 26, 2007. *See* Securities Exchange Act Release No. 55155 (Jan. 23, 2007), 72 FR 4741 (Feb. 1, 2007) (SR–BSE–2006–49). The Penny Pilot Program was later extended through September 27, 2007. *See* Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (Aug. 2, 2007) (SR–BSE–2007–38). A subsequent rule filing by the Exchange on September 27, 2007 initiated a two-phased expansion of the Penny Pilot Program. *See* Securities Exchange Act Release No. 56566 (Sept. 27, 2007), 72 FR 56400 (Oct. 3, 2007) (SRBSE- 2007–40). *See also* Securities Exchange Act Release No. 57566 (March 26, 2008), 73 FR 18013 (April 2, 2008) (SR–BSE–2008–20). The Penny Pilot Program was then extended and expanded a number of times and is set to expire on December 31, 2010. *See* Securities Exchange Act Release Nos. 59629 (March 26, 2009), 74 FR 15021 (April 2, 2009) (SR–BX–2009–017); 60213 (July 1, 2009), 74 FR 32998 (July 9, 2009) (SR–BX–2009–032); 60886 (Oct. 27, 2009), 74 FR 56897 (Nov. 3, 2009) (SR–BX–2009–067); 60950 (Nov. 6, 2009), 74 FR 58666 (Nov. 6, 2009) (SR–BX–2009–069); 61456 (Feb. 1, 2010), 75 FR 6235 (Feb. 8, 2010) (SR–BX–2010–011); 62039 (May 5, 2010), 75 FR 26313 (May 11, 2010) (SR–BX–2010–032), 62615 (July 30, 2010), 75 FR 47875 (Aug. 9, 2010) (SR–BX–2010–052), and 63397 (Nov. 30, 2010), 75 FR 75716 (Dec. 8, 2010) (SR–BX–2010–084). The extension of the effective date is the only change to the Penny Pilot Program being proposed at this time.

the options included in the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of BOX's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest will allow the Penny Pilot Program to remain in effect on BOX without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File No. SR–BX–2011–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BX–2011–083. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–BX–2011–083 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32661 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65973; File No. SR–NYSE–2011–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, New York Stock Exchange LLC (''NYSE'' or the ''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 expand the scope of potential ''Users'' of its co-location services, and to amend its Price List. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes member organizations, as that term is defined in NYSE Rule 2(b), and Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B).

[8] 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. 65629 (October 26, 2011), 76 FR 67507 (''Notice'').

[4] *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310.

The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[5] Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors.[6]

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center.[7] ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.[11] The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.[12] The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.[13] In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2011–53) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32666 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[5] As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67508.

[6] *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

[7] *Id.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, 76 FR at 67508.

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65975; File No. SR–NYSEAmex–2011–82]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant that Requests To Receive Co-Location Services Directly from the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''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 expand the scope of potential ''Users'' of its co-location services, and to amend its Fee Schedule. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any ''ATP Holder,'' as that term is defined in NYSE Amex Options Rule 900.2NY(4), and any ''Sponsored Participant,'' as that term is defined in NYSE Amex Options Rule 900.2NY(77). The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[5] Under the proposed rule change, Users could therefore include ATP Holders, Sponsored Participants,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65626 (October 26, 2011), 76 FR 67506 (''Notice'').

[4] *See* Securities Exchange Act Release No. 63274 (November 8, 2010), 75 FR 69722.

[5] As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67506.

non-ATP Holder broker-dealers and vendors.[6]

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center.[7] ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.[11] The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.[12] The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.[13] In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEAmex–2011–82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32668 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65977; File No. SR–NYSEArca–2011–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Arca Options Rule 6.72 in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2012

December 15, 2011.

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 2, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program''), previously approved by the Securities and Exchange Commission (''Commission''), through June 30, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.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. 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 hereby proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 to extend the time period of the Pilot Program,[3] which is currently scheduled to expire on December 31, 2011, through June 30, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2012[4] and that the replacement issues will be selected

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[6] *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

[7] *Id.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, 76 FR at 67507.

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 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. 63376 (November 24, 2010), 75 FR 75527 (December 3, 2010) (SR–NYSEArca–2010–104).

[4] The Exchange is proposing to extend the Pilot Program only for an additional six months. Therefore, a date for adding replacement issues to the Pilot Program during the second half of the calendar year, *i.e.,* after June 30, 2012, is not applicable, as reflected in the proposed change to Commentary .02.

based on trading activity for the six month period beginning June 1, 2011 and ending November 30, 2011.[5]

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to reports that will analyze the impact of the Pilot Program on market quality and options systems capacity. These reports will include, but are not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

The Exchange also proposes a technical change to NYSE Arca Options Rule 6.72(a)(3)(A) to reflect that QQQQ is now referred to as ''PowerShares QQQ Trust℠, Series 1'' and is traded under the symbol ''QQQ.''[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), 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. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2011–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2011–93. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–NYSEArca–2011–93 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32670 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[5] The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] NASDAQ, Nasdaq–100 Index, Nasdaq–100 Index Tracking Stock and QQQ are trade/service marks of The Nasdaq Stock Market, Inc. and have been licensed for use by Invesco PowerShares Capital Management LLC.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65958; File No. SR–ISE–2011–81]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Complex Orders Executed on the Exchange

December 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 30, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 currently assesses a per contract transaction fee to market participants that add or remove liquidity in the Complex Order Book (''maker/taker fees'') in symbols that are in the Penny Pilot program. Included therein is a subset of 103 symbols that are assessed a slightly higher taker fee (the ''Select Symbols'').[3] Specifically, the Exchange charges ISE market maker orders,[4] firm proprietary orders and Customer (Professional Orders) [5] $0.10 per contract for providing liquidity on the Complex Order Book and $0.30 per contract ($0.32 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. ISE market makers who take liquidity from the Complex Order Book by trading with orders that are preferenced to them are charged $0.28 per contract ($0.30 per contract in the Select Symbols). Non-ISE Market Makers [6] are currently charged $0.20 per contract for providing liquidity and $0.35 per contract ($0.36 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. Priority Customer orders are not charged a fee for trading in the Complex Order Book and receive a rebate of $0.25 per contract ($0.30 per contract in the Select Symbols) when those orders trade with non-customer orders in the Complex Order Book.

The Exchange recently received approval to allow market makers to enter quotations for complex order strategies in the Complex Order Book.[7] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange now proposes to amend the fees that apply to transactions in the Complex Order Book in the following three symbols: XOP, XLB and EFA.[8] Specifically, the Exchange proposes to amend its maker fee for complex orders in these three symbols when these orders interact with Priority Customers.[9] The Exchange proposes to increase its maker fee from $0.10 per contract to $0.30 per contract in XOP ($0.32 per contract in XLB and EFA) for ISE market maker orders, firm proprietary orders, and Customer (Professional Orders) when these orders interact with Priority Customer orders. The Exchange proposes to increase its maker fee from $0.20 per contract to $0.30 per contract in XOP ($0.32 per contract in XLB and EFA) for Non-ISE Market Makers orders when these orders interact with Priority Customer orders. The Exchange is not proposing any change to fees for Priority Customer orders that trade in the Complex Order Book.

Further, for Priority Customer complex orders in symbols that are in the Penny Pilot program, the Exchange currently provides a rebate of $0.25 per contract ($0.30 per contract for Select Symbols) when these orders trade with non-customer orders in the Complex Order Book. The Exchange proposes to continue this rebate incentive. As such, Priority Customer complex orders in XOP will continue to receive a rebate of $0.25 per contract when these orders trade with non-customer orders in the Complex Order Book, while Priority Customer complex orders in XLB and EFA will continue to receive a rebate of $0.30 per contract when these orders trade with non-customer orders in the Complex Order Book.

Additionally, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism,[10] Price Improvement Mechanism [11] and Solicited Order Mechanism.[12] This rebate currently applies to all complex orders in symbols that are subject to the Exchange's maker/taker fees. To clarify the applicability of this rebate, the Exchange proposes to add footnote 2 to the Complex Order Maker Fee (Each Leg) for Select Symbols column and the Complex Order Taker Fee (Each Leg) for Select Symbols column on the Exchange's Schedule of Fees. For the Facilitation and Solicited Order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term ''market makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[5] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* ISR Rule 100(a)(37C).

[6] The term ''Non-ISE Market Maker'' means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the ''Act'') [sic] registered in the same options class on another options exchange. *See* Schedule of Fees, page 4.

[7] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[8] The Exchange notes that XOP is currently in the Penny Pilot program and XLB and EFA are currently Select Symbols.

[9] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account. *See* ISE Rule 100(a)(37A).

[10] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[11] *See* Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43). The Exchange subsequently increased this rebate to $0.25 per contract. *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[12] *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. The Exchange proposes to continue this rebate incentive also. As such, a per contract rebate at the current levels will continue to apply to those contracts in XOP, XLB, and EFA that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism.

The Exchange also proposes to continue providing ISE market makers with a two cent discount when trading against orders that are preferenced to them. Currently, this discount is only applicable when ISE Market Makers remove liquidity from the Complex Order Book. The Exchange now proposes to provide this fee discount when ISE Market Makers add or remove liquidity from the Complex Order Book in XOP, XLB and EFA. Accordingly, ISE market makers that add or remove liquidity in XLB and EFA in the Complex Order Book will be charged $0.30 per contract ($0.28 per contract in XOP) when trading with orders that are preferenced to them.

The Exchange proposes to make these fee changes operative on December 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Penny Pilot Symbols and the Select Symbols in the Complex Order Book, as applicable.

The Exchange believes that increasing the fees applicable to orders executed in the Complex Order Book when trading against Priority Customers in XOP, XLB and EFA is appropriate given the new functionality that allows market makers to quote in the Complex Order Book. Additionally, the Exchange's fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Specifically, the Exchange believes that its proposal to assess a make fee of $0.30 per contract for XOP and $0.32 for XLB and EFA when orders in these symbols interact with Priority Customers is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE market makers on preferenced orders because this will provide an incentive for market makers to quote in the Complex Order Book. The Exchange believes that it is reasonable and equitable to continue to provide rebates for Priority Customer complex orders because paying a rebate will continue to attract additional order flow to the Exchange and thereby create liquidity that ultimately will benefit all market participants who trade on the Exchange.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[15] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–81. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2011–81 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32569 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65955; File No. SR–NYSEARCA–2011–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting the Text of Financial Industry Regulatory Authority Rule 5210, Which Prohibits the Publication of Manipulative or Deceptive Quotations or Transactions, as NYSE Arca Equities Rule 5210

December 14, 2011.

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 7, 2011, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt the text of Financial Industry Regulatory Authority (''FINRA'') Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Arca Equities Rule 5210. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 self-regulatory organization 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 Exchange proposes to adopt the text of FINRA Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Arca Equities Rule 5210.[3]

Background

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a Regulatory Services Agreement under which FINRA agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. On June 14, 2010, FINRA also assumed responsibility for performing the market surveillance and enforcement functions performed by NYSER. To facilitate FINRA's performance of these enforcement functions and further harmonize the rules of FINRA and NYSE Arca Equities, the Exchange is proposing to adopt the text of FINRA Rule 5210.[4] FINRA Rule 5210 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security, unless such member believes that such transaction was a bona fide purchase or sale of such security. The Rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless the member believes that such quotation represents a bona fide bid for, or offer of, such security.

The Exchange believes that the proposed rule change will strengthen FINRA's ability to bring sanctions on behalf of the Exchange against an ETP Holder for engaging in manipulative forms of quoting behavior, for example, quote stuffing and layering. FINRA Rule 5210 (formerly NASD Rule 3310 and IM 3310)[5] was successfully used in the Acceptance, Waiver and Consent announced in September 2010 by FINRA against Trillium Brokerage Services and other individual Respondents.[6] The Exchange believes that the proposed rule change would augment FINRA's ability on behalf of the Exchange to take action against manipulative quoting behavior on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (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 mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change would provide an additional basis for bringing enforcement actions against ETP Holders that engage in deceptive and manipulative quoting activity. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the FINRA Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[16] 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. 60835 (Oct. 16, 2009), 74 FR 54616 (Oct. 22, 2009) (SR–FINRA–2009–055). The Exchange's affiliates, New York Stock Exchange LLC and NYSE Amex LLC, are proposing to adopt a substantially similar rule.

[4] For consistency with Exchange rules, the Exchange proposes to change all references from ''member'' to ''ETP Holder.''

[5] *See supra* n. 4.

[6] *See http://www.finra.org/web/groups/industry/@ip/@enf/@ad/documents/industry/p122044.pdf.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to more effectively carry out its enforcement activities on behalf of the Exchange. Therefore, the Commission designates the proposal operative upon filing.[14]

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2011–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2011–90. This file number should be included on the subject line if email 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 Web site viewing and printing 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–NYSEARCA–2011–90 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32541 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65979; File No. SR–C2–2011–031]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Concerning Industry Directors and the Nomination of Representative Directors

December 15, 2011.

I. Introduction

On October 21, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') 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 amend its Bylaws concerning Industry Directors and the nomination of Representative Directors and to make conforming changes to the C2 Certificate of Incorporation and the Voting Agreement between C2 and CBOE Holdings, Inc. (''CBOE Holdings''). On November 1, 2011, the Exchange submitted a technical amendment (''Amendment No. 1'') to the proposed rule change.[3]

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As provided in the instructions to Form 19b–4, the Exchange noted in Item 2 of its filing that it needed to obtain, but had not yet obtained, formal approval from its Board of Directors for the Bylaw, Certificate of Incorporation, and Voting Agreement changes set forth in this proposed rule change. The Exchange also noted that it needed to obtain, but had not yet obtained, approval from CBOE Holdings, the Exchange's sole stockholder, of the changes to the Certificate of Incorporation and Voting Agreement. The Exchange stated that once these approvals were obtained, it would file a technical amendment to this proposed rule change to reflect these approvals. Amendment No. 1 reflected that the requisite approvals were obtained on November 1, 2011, and represented that no further action in connection with this proposed rule change was required. In addition, Amendment No. 1 contained the Exchange's consent to an extension of time for Commission consideration of this proposed rule change for an additional thirty-five

Continued

On November 9, 2011, the proposed rule change was published for comment in the **Federal Register**.[4] The Commission received no comments on the proposed rule change. This order grants approval to the rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

(a) Elimination of 30% Industry Director Requirement

Currently, the Exchange's Bylaws contain a requirement that its Board of Directors be composed of at least 30% Industry Directors.[5] The Exchange proposed to amend its Bylaws to eliminate this requirement. In its Notice, the Exchange said that this change was intended to give it flexibility as it evaluates the composition of its Board in the future.[6] C2 also proposed a conforming change to amend Section 4.4 of its Bylaws to delete the clause that requires the Nominating and Governance Committee (''NGC'') to consist of both Industry and Non-Industry Directors.

(b) Nomination of Representative Directors

Currently, the Exchange Bylaws state that at least 20% of C2's directors must be Representative Directors.[7] As described in Section 3.2 of the Bylaws, candidates for Representative Director positions are nominated by the Industry Director Subcommittee of the NGC.[8] In addition, C2 Trading Permit Holders may nominate alternative candidates (in addition to those nominated by the Industry Director Subcommittee) for election to the Representative Director positions via a petition process. In such case, a run-off election is held, in which C2's Trading Permit Holders vote to determine which candidates will be elected to the C2 Board of Directors to serve as Representative Directors.

As proposed, the Exchange Bylaws will continue to require that at least 20% of C2's directors must be Representative Directors. However, the Exchange proposed to amend its Bylaws to revise the nomination process for the Representative Directors. First, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors to reflect the fact that the other change it proposed with respect to Industry Directors could result in the Board potentially not having Industry Directors. Second, the Exchange proposed to incorporate into the Bylaws the concept of a Representative Director Nominating Body (''RDNB'').[9] Under proposed Section 1.1(k), RDNB would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC and would mean the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has fewer than two Industry Directors. The RDNB would nominate the Representative Directors in accordance with the current provisions of proposed Section 3.2 of the Bylaws, and therefore would perform the functions currently performed by the Industry Director Subcommittee.

In addition, C2 proposed to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election. C2 proposed to amend these deadlines in order to provide it with additional flexibility to complete the process for determining nominees at an earlier point in time. The Exchange did not propose to change the timeframes between the milestones in the process. In addition, C2 intends the new timelines to allow it to synchronize the Exchange's nomination process to that of CBOE Holdings.

The NGC will continue to be bound to accept and nominate the Representative Director nominees recommended by the RDNB, provided that the Representative Director nominees are not opposed by a petition candidate. If such Representative Director nominees are opposed by a petition candidate, then the Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a run-off election.[10]

(c) Amendments Relating to the Advisory Board

Currently, Section 6.1 of the Exchange Bylaws provides that the Board may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange proposed to amend Section 6.1 of the Bylaws to provide that the Exchange ''will'' (as opposed to ''may'') have an Advisory Board, which shall advise the Board of Directors in addition to the Office of the Chairman regarding matters that impact Trading Permit Holders. C2 also proposed to amend Section 6.1 of its Bylaws to expressly provide that at least two members of the Advisory Board shall be Trading Permit Holders or persons associated with Trading Permit Holders.

(d) Amendment To Certificate of Incorporation and Voting Agreement

Finally, C2 proposed to make conforming changes to its Certificate of Incorporation and the Voting Agreement between it and its parent company, CBOE Holdings, to replace the references to the Industry Director Subcommittee with the new term Representative Director Nominating Body. It also proposed to make non-substantive changes to the Voting Agreement.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with: (1) Section 6(b)(1) of the Act,[12] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,[13] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the ''fair

days after November 1, 2011 (the filing date of this amendment).

[4] *See* Securities Exchange Act Release No. 65681 (November 3, 2011), 76 FR 69783 (''Notice'').

[5] *See* Section 3.1 of the Exchange's Bylaws. The term ''Industry Directors'' is defined in this Section.

[6] *See* Notice, *supra* note 4, at 69784.

[7] *See* Section 3.1 of Exchange Bylaws. The term ''Representative Directors'' is defined in Section 3.2 of the Exchange Bylaws.

[8] The Industry Director Subcommittee is composed of all of the Industry Directors serving on the NGC.

[9] *See* proposed new Bylaws definition 1.1(k) and the proposed changes to Sections 4.4 and 6.1 of the Bylaws.

[10] *See* Section 3.1 of the Exchange Bylaws.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(3).

representation requirement''); and (3) Section 6(b)(5) of the Act,[14] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

(a) Elimination of 30% Industry Director Requirement and Fair Representation

The Commission believes that the Exchange's proposal to eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors is consistent with Section 6(b) of the Act,[15] including Section 6(b)(3) of the Act.[16] Even if the Exchange's Board might not someday include directors who technically qualify as Industry Directors, or the number of such directors is otherwise reduced below current levels,[17] the Exchange's proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[18] Specifically, at all times, at least 20% of the directors serving on the Board will be Representative Directors nominated (or otherwise selected through the petition process) with the input of Trading Permit Holders (or persons associated with Trading Permit Holders) as provided in the proposed Section 3.2 of the Bylaws.

The Commission has previously approved proposals in which an exchange's board of directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the ''fair representation'' requirement in the selection and election of directors.[19]

(b) Nomination of Representative Directors and Fair Representation

As proposed, the Exchange Bylaws will continue to require that at least 20% of C2's directors must be Representative Directors. However, in light of the changes that the Exchange proposed to the composition of the Board, the Exchange revised the nomination process for the Representative Directors. First, the Exchange proposed to incorporate into the Bylaws the concept of a RDNB,[20] which would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC or the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has less than two Industry Directors. Second, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors.[21] In addition, C2 proposed to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election.[22]

The Commission believes that the Exchange's proposed changes to the nomination process for the Representative Directors are consistent with Section 6(b) of the Act,[23] including Section 6(b)(3) of the Act.[24] As discussed above, currently the Exchange satisfies the fair representation requirement by having on its Board at least 20% Representative Directors. As a result of the proposed changes to the composition of the Board, the NGC could have fewer than two Industry Directors, in which case the Industry Director Subcommittee would not be formed.[25] Under this scenario, the RDNB would be the Trading Permit Holders Subcommittee of the Advisory Board (consisting of at least two members who are Trading Permit Holders (or persons associated with Trading Permit Holders)) [26] and would provide a mechanism for Trading Permit Holders to have input with respect to the nominees for Representative Directors. Pursuant to Bylaws Section 6.1, members of the Advisory Board are recommended by the NGC for approval by the Board. The proposed change leaves intact the current process to nominate and elect Representative Directors, but is intended to accommodate the need for member input in the nomination of Representative Director candidates in the event that the Board does not contain a sufficient number of Industry Directors to empanel the Industry Director Subcommittee.

Further, with respect to the proposed changes to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election, the Commission believes that such changes generally preserve the current schedule with respect to the various milestones in the process, while allowing the Exchange to shift slightly the start of the process. Further, the Commission notes that the proposed provision specifically provides that ''[i]n no event shall the annual meeting date each year be prior to the completion of the process for the nomination of the Representative Directors for that annual meeting as set forth in Sections 3.1 and 3.2.'' [27]

(c) Amendments Relating to the Advisory Board and Fair Representation

As stated above, the Exchange proposed to amend Section 6.1 of the Bylaws to provide that the Exchange ''will'' (as opposed to ''may'') have an Advisory Board, which shall advise the Board of Directors in addition to the Office of the Chairman regarding matters that impact Trading Permit

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[17] In the Notice, the Exchange stated that it has not made a determination as to whether it will reduce (or eliminate) the number of directors on its Board who qualify as an Industry Director and that it recognizes the importance of having directors who have industry expertise and knowledge (whether those directors are Industry Directors or Non-Industry Directors). *See* Notice, *supra* note 4, at 69784.

[18] 15 U.S.C. 78f(b)(3).

[19] *See, e.g.,* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR–NYSE–2003–34).

[20] *See supra* note 9 and accompanying text.

[21] In the Notice, the Exchange explained that it proposed this change because it is possible that at some point in the future C2's Board may not have Industry Directors serving on it. *See* Notice, *supra* note 4, at 69784.

[22] In the Notice, the Exchange explained that it proposed this change because it would provide the Exchange, the NGC, and the RDNB with additional flexibility and enable the exchange to complete the process for determining its nominees for Representative Director positions at an earlier point in time without changing the time period, as well as synchronize C2's nomination process with the nomination process of its parent company, CBOE Holdings. *See* Notice, *supra* note 4, at 69785.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[25] *See* Section 4.4 of the Exchange Bylaws.

[26] *See infra* note 29 and accompanying text.

[27] *See* Section 2.2 of the Exchange Bylaws.

Holders.[28] C2 also proposed to amend Section 6.1 of its Bylaws to expressly provide that at least two members of the Advisory Board shall be Trading Permit Holders or persons associated with Trading Permit Holders.[29] By providing for the mandatory establishment of the Advisory Board and for the mandatory inclusion of at least two Trading Permit Holders or persons associated with Trading Permit Holders in the Advisory Board, the Exchange's proposal is designed to facilitate the provision of input by industry members and Trading Permit Holders into the selection of its directors and administration of its affairs, consistent with Section 6(b)(3) of the Act.[30]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–C2–2011–031), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32603 Filed 12–20–11; 8:45 am]

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[28] In the Notice, the Exchange explained that it recently established an Advisory Board. *See* Notice, *supra* note 4, at 69784.

[29] In the Notice, the Exchange noted that the Advisory Board provides a mechanism for Trading Permit Holders to provide industry feedback to C2's Chairman and CEO, Executive Vice Chairman, President and Lead Director, all of whom are members of the Advisory Board, consistent with Section 6(b)(3) of the Act. *See* Notice, *supra* note 4, at 69784.

[30] 15 U.S.C. 78f(b)(3).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65970; File No. SR–NYSEArca–2011–74]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant that Requests to Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 expand the scope of potential ''Users'' of its co-location services, and to amend its Fee Schedule. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (*see* NYSE Arca Equities Rule 1.1(yy)). The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[5] Under the proposed rule change, Users could therefore include ETP Holders, Sponsored Participants, non-ETP Holder broker-dealers and vendors.[6]

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center.[7] ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65625 (October 26, 2011), 76 FR 67522 (''Notice'').

[4] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048.

[5] As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67522.

[6] *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

[7] *Id.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

manner that is not unfairly discriminatory.[11] The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.[12] The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.[13] In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEArca–2011–74) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32664 Filed 12–20–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65967; File No. SR–CBOE–2011–118]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

December 15, 2011.

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 2, 2011, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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 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 Penny Pilot Program is scheduled to expire on December 31, 2011. CBOE proposes to extend the Pilot Program until June 30, 2012. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Penny Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively-traded, multiple-listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[3] and would be added on the second trading day following January 1, 2012. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[4] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying any replacement class. CBOE will submit to the SEC reports that will include sample data and analysis of information collected from October 1, 2011 through March 31, 2012 and April 1 through June 30, 2012 for the ten most active and twenty least active option classes added to the Pilot Program. This proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. CBOE will also identify, for comparison purposes, a control group consisting of the ten least active option classes from the initial 58 Pilot Program classes. This report will include, but not be limited to, the following: (1) Data and analysis of the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on CBOE's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and

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[11] *See* Notice, 76 FR at 67523.

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The month immediately preceding a replacement class's addition to the Pilot Program (i.e. December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading following January 1, 2012 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2011 through November 30, 2011.

[4] *See* Securities Exchange Act Release No. 60864 (October 22, 2009) (granting immediate effectiveness to SR–CBOE–2009–76).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an extension of the Penny Pilot Program for the benefit of market participants.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2011–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2011–118. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–CBOE–2011–118 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32662 Filed 12–20–11; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65965; File No. SR–BATS–2011–050]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 15, 2011.

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 2, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BATS. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (''BATS Options'') to extend through June 30, 2012, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission.[3]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through December 31, 2011. *See* Securities Exchange Act Release No. 63385 (November 29, 2010), 75 FR 75526 (December 3, 2010) (SR–BATS–2010–035).

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 purpose of this filing is to extend through June 30, 2012, the Penny Pilot in options classes in the Pilot Program as previously approved by the Commission, and to provide a revised date for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2012. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2011, and ending November 30, 2011.

In the Exchange's filing to propose the rules to govern BATS Options,[4] the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Consistent with this proposal, since it commenced operations the Exchange has twice expanded the options classes subject to the Penny Pilot.[5] The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot.

The Exchange agrees to provide reports that will analyze the impact of the Pilot Program on market quality and options capacity. These reports will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

In addition to the proposed extension of the Pilot Program, the Exchange proposes to modify Interpretation and Policy .01 to make clear the date on which the Pilot Program is set to expire and to specify that options subject to the Pilot Program will be identified in Exchange Information Circulars that are distributed to members of the Exchange and posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2011–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2011–050. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

[4] *See* Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR–BATS–2009–031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

[5] *See* Securities Exchange Act Release No. 62595 (July 29, 2010), 75 FR 47043 (August 4, 2010) (SR–BATS–2010–019); Securities Exchange Act Release No. 62033 (May 4, 2010), 75 FR 26301 (May 11, 2010) (SR–BATS–2010–009).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

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 No. SR–BATS–2011–050 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32660 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65978; File No. SR–NYSEAmex–2011–98]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Amex Options Rule 960NY in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2012

December 15, 2011.

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 2, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to NYSE Amex Options Rule 960NY in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program''), previously approved by the Securities and Exchange Commission (''Commission''), through June 30, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.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. 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 hereby proposes to amend Commentary .02 to NYSE Amex Options Rule 960NY to extend the time period of the Pilot Program,[3] which is currently scheduled to expire on December 31, 2011, through June 30, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2012[4] and that the replacement issues will be selected based on trading activity for the six month period beginning June 1, 2011 and ending November 30, 2011.[5]

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to reports that will analyze the impact of the Pilot Program on market quality and options systems capacity. These reports will include, but are not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

The Exchange also proposes a technical change to NYSE Amex Options Rule 960NY(a)(3)(A) to reflect that QQQQ is now referred to as ''PowerShares QQQ Trust℠, Series 1'' and is traded under the symbol ''QQQ.''[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), 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. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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

Written comments were neither solicited nor received.

[10] 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. 63393 (November 30, 2010), 75 FR 75715 (December 6, 2010) (SR–NYSEAmex–2010–107).

[4] The Exchange is proposing to extend the Pilot Program only for an additional six months. Therefore, a date for adding replacement issues to the Pilot Program during the second half of the calendar year, *i.e.,* after June 30, 2012, is not applicable, as reflected in the proposed change to Commentary .02.

[5] The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] NASDAQ, Nasdaq-100 Index, Nasdaq-100 Index Tracking Stock and QQQ are trade/service marks of The Nasdaq Stock Market, Inc. and have been licensed for use by Invesco PowerShares Capital Management LLC.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2011–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex-2011–98. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–NYSEAmex–2011–98 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32671 Filed 12–20–11; 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)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65976; File No. SR–Phlx–2011–172]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

December 15, 2011.

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 2, 2011, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1034 (Minimum Increments) to amend Phlx Rule 1034 (Minimum Increments) to: Extend through June 30, 2012, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''); and replace any Penny Pilot issues that have been delisted.[3]

The text of the amended Exchange rule is set forth immediately below. Proposed new language is in *italics* and proposed deleted language is [bracketed].[4]

* * * * *

Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraph (i)(B) below, all options on stocks, index options, and Exchange Traded Options quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire [December 31, 2011] *June 30, 2012* (the ''pilot''), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher,

[3] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR–Phlx–2010–103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR–Phlx–2010–167) (notice of filing and immediate effectiveness extending the Penny Pilot).

[4] Changes are marked to the rules of NASDAQ OMX PHLX LLC found at *http://nasdaqomxphlx.cchwallstreet.com.*

except that options overlying the PowerShares QQQ Trust (''QQQQ''),® SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM'') shall be quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity [in the previous six months]*for the six month period beginning June 1, 2011, and ending November 30, 2011.* The replacement issues may be added to the pilot on the second trading day following January 1, [2011 and July 1, 2011]*2012.*

(C) No Change.

(ii)–(iii) No Change.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 purpose of this filing is to amend Phlx Rule 1034 to extend the Penny Pilot through June 30, 2012 and replace any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on December 31, 2011, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for six months through June 30, 2012.

Commensurate with the extension of the Penny Pilot through June 30, 2012, the Exchange proposes to replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2011, and ending November 30, 2011. The replacement issues would be added to the Pilot on the second trading day following January 1, 2012.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Best Bid or Offer (''BBO'') spread, in terms of data and analysis on the number of quotations generated for options included in the report; (2) size of BBO, in terms of an assessment of the quotation spreads for the options included in the report; (3) industry Average Daily Volume (''ADV''), in terms of data reflecting the size and depth of markets; (4) an assessment of the impact of the Pilot Program on the capacity of Phlx's automated systems; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to 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, by extending the Penny Pilot and replacing delisted Penny Pilot issues.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format through June 30, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19bb–4–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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

[5] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19bb–4–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–172 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–172. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–Phlx–2011–172 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32669 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65974; File No. SR–NYSEAmex–2011–81]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''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 expand the scope of potential ''Users'' of its co-location services, and to amend its Price List. The proposed rule change was published for comment in the **FEDERAL REGISTER** on November 1, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes member organizations, as that term is defined in Rule 2(b)—NYSE Amex Equities, and Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—NYSE Amex Equities. The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[5] Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors.[6]

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center.[7] ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair

[10] 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. 65627 (October 26, 2011), 76 FR 67520 (''Notice'').

[4] *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299.

[5] As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67521.

[6] *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

[7] *Id.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.[11] The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.[12] The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.[13] In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEAmex-2011–81) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32667 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* Notice, 76 FR at 67521.

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65972; File No. SR–CBOE–2011–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Weeklys Program

December 15, 2011.

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 13, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 Rules 5.5 and 24.9 to increase the number of option classes on which Short Term Options Series (''Weekly options'') may be opened in the Exchange's Short Term Option Series Program (''Weeklys Program'') from 25 to 30 classes. 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.

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 self-regulatory organization 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rules 5.5 and 24.9 by increasing the number of option classes on which Weekly options may be opened in the Exchange's Weeklys Program.[5] Currently, the Exchange may select up to 25 currently listed option classes on which Weekly options may be opened in the Weeklys Program. The Exchange is proposing to increase this to a total of 30 classes on which Weekly options may be opened for trading. This is a competitive filing and is based on recently approved filings submitted by The NASDAQ Stock Market LLC for the NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX, Inc. (''PHLX'').[6]

On November 17, 2011, CBOE amended its Weeklys Program by increasing the number of strikes that may be listed per class (from 20 to 30) that participates in the Weeklys Program,[7] and by increasing the number of classes (from 15 to 25) that are eligible to participate in CBOE's Weeklys Program.[8] On that same day, NOM and PHLX each increased the number of classes that are eligible to participate in their Weeklys Programs from 15 classes to 30 classes. As a result, CBOE is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to selecting only 25 classes that may participate in CBOE Weeklys Program (whereas PHLX and NOM may each select 30 classes).[9]

The Exchange is not proposing any changes to these additional Weeklys

[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] On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63). The Weeklys Program was made permanent on April 27, 2009. *See* Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018).

[6] *See* Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72476 (November 23, 2011) (SR–NASDAQ–2011–138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–PHLX–2011–131).

[7] *See* Securities Exchange Act Release No. 65772 (November 17, 2011), 76 FR 72484 (November 23, 2011) (SR–CBOE–2011–086).

[8] *See* Securities Exchange Act Release No. 65774 (November 17, 2011), 76 FR 72488 (November 23, 2011) (SR–CBOE–2011–108).

[9] CBOE is permitted to list Weekly options ''on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.'' *See* CBOE Rule 5.5(d)(1) and 24.9(a)(2)(A)(i).

Program limitations other than to increase from 25 to 30 the number of option classes that may participate in the Weeklys Program.

The Exchange notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. The Exchange believes a modest increase to the number of classes that may participate in the Weeklys Program, such as the one proposed in this rule filing, will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes that participate in the Weeklys Program.

The proposed increase to the number of classes eligible to participate in the Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[11] 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, and, in general, to protect investors and the public interest. The Exchange believes that expanding the Weeklys Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklys Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because the number of series per class also remains limited, and the Exchange does not believe that the additional price points will result in fractured liquidity.

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 not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing NOM and PHLX rules. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[14] Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–125. This file number should be included on the subject line if email 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 Web site viewing and

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[14] *See supra* note 6.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

printing 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–CBOE–2011–125 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32604 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65980; File No. SR–CBOE–2011–099]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Concerning Industry Directors and the Nomination of Representative Directors

December 15, 2011.

I. Introduction

On October 21, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Bylaws concerning Industry Directors and the nomination of Representative Directors and to make conforming changes to the CBOE Certificate of Incorporation and the Voting Agreement between CBOE and CBOE Holdings, Inc. (''CBOE Holdings''). On November 1, 2011, the Exchange submitted a technical amendment (''Amendment No. 1'') to the proposed rule change.[3] On November 9, 2011, the proposed rule change was published for comment in the **Federal Register**.[4] The Commission received no comments on the proposed rule change. This order grants approval to the rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

(a) Elimination of 30% Industry Director Requirement

Currently, the Exchange's Bylaws contain a requirement that its Board of Directors be composed of at least 30% Industry Directors.[5] The Exchange proposed to amend its Bylaws to eliminate this requirement. In its Notice, the Exchange said that this change was intended to give it flexibility as it evaluates the composition of its Board in the future.[6] CBOE also proposed a conforming change to amend Section 4.4 of its Bylaws to delete the clause that requires the Nominating and Governance Committee (''NGC'') to consist of both Industry and Non-Industry Directors.

(b) Nomination of Representative Directors

Currently, the Exchange Bylaws state that at least 20% of CBOE's directors must be Representative Directors.[7] As described in Section 3.2 of the Bylaws, candidates for Representative Director positions are nominated by the Industry Director Subcommittee of the NGC.[8] In addition, CBOE Trading Permit Holders may nominate alternative candidates (in addition to those nominated by the Industry Director Subcommittee) for election to the Representative Director positions via a petition process. In such case, a run-off election is held, in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the CBOE Board of Directors to serve as Representative Directors.

As proposed, the Exchange Bylaws will continue to require that at least 20% of CBOE's directors must be Representative Directors. However, the Exchange proposed to amend its Bylaws to revise the nomination process for the Representative Directors. First, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors to reflect the fact that the other change it proposed with respect to Industry Directors could result in the Board potentially not having Industry Directors. Second, the Exchange proposed to incorporate into the Bylaws the concept of a Representative Director Nominating Body (''RDNB'').[9] Under proposed Section 1.1(k), RDNB would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC and would mean the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has fewer than two Industry Directors. The RDNB would nominate the Representative Directors in accordance with the current provisions of proposed Section 3.2 of the Bylaws, and therefore would perform the functions currently performed by the Industry Director Subcommittee.

In addition, CBOE proposed to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election. CBOE proposed to amend these deadlines in order to provide it with additional flexibility to complete the process for determining nominees at an earlier point in time. The Exchange did not propose to change the timeframes between the milestones in the process. In addition, CBOE intends the new timelines to allow it to synchronize the Exchange's nomination process to that of CBOE Holdings.

The NGC will continue to be bound to accept and nominate the Representative Director nominees recommended by the RDNB, provided

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As provided in the instructions to Form 19b–4, the Exchange noted in Item 2 of its filing that it needed to obtain, but had not yet obtained, formal approval from its Board of Directors for the Bylaw, Certificate of Incorporation, and Voting Agreement changes set forth in this proposed rule change. The Exchange also noted that it needed to obtain, but had not yet obtained, approval from CBOE Holdings, the Exchange's sole stockholder, of the changes to the Certificate of Incorporation and Voting Agreement. The Exchange stated that once these approvals were obtained, it would file a technical amendment to this proposed rule change to reflect these approvals. Amendment No. 1 reflected that the requisite approvals were obtained on November 1, 2011, and represented that no further action in connection with this proposed rule change was required. In addition, Amendment No. 1 contained the Exchange's consent to an extension of time for Commission consideration of this proposed rule change for an additional thirty-five days after November 1, 2011 (the filing date of this amendment).

[4] *See* Securities Exchange Act Release No. 65682 (November 3, 2011), 76 FR 69780 (''Notice'').

[5] *See* Section 3.1 of the Exchange's Bylaws. The term ''Industry Directors'' is defined in this Section.

[6] *See* Notice, *supra* note 4, at 69781.

[7] *See* Section 3.1 of Exchange Bylaws. The term ''Representative Directors'' is defined in Section 3.2 of the Exchange Bylaws.

[8] The Industry Director Subcommittee is composed of all of the Industry Directors serving on the NGC.

[9] *See* proposed new Bylaws definition 1.1(k) and the proposed changes to Sections 4.4 and 6.1 of the Bylaws.

that the Representative Director nominees are not opposed by a petition candidate. If such Representative Director nominees are opposed by a petition candidate, then the Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a run-off election.[10]

(c) Amendments Relating to the Advisory Board

Currently, Section 6.1 of the Exchange Bylaws provides that the Board may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange proposed to amend Section 6.1 of the Bylaws to provide that the Exchange ''will'' (as opposed to ''may'') have an Advisory Board, which shall advise the Board of Directors in addition to the Office of the Chairman regarding matters that impact Trading Permit Holders. CBOE also proposed to amend Section 6.1 of its Bylaws to expressly provide that at least two members of the Advisory Board shall be Trading Permit Holders or persons associated with Trading Permit Holders.

(d) Amendment to Certificate of Incorporation and Voting Agreement

Finally, CBOE proposed to make conforming changes to its Certificate of Incorporation and the Voting Agreement between it and its parent company, CBOE Holdings, to replace the references to the Industry Director Subcommittee with the new term Representative Director Nominating Body. It also proposed to make non-substantive changes to the Voting Agreement.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with: (1) Section 6(b)(1) of the Act,[12] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,[13] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the ''fair representation requirement''); and (3) Section 6(b)(5) of the Act,[14] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

(a) Elimination of 30% Industry Director Requirement and Fair Representation

The Commission believes that the Exchange's proposal to eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors is consistent with Section 6(b) of the Act,[15] including Section 6(b)(3) of the Act.[16] Even if the Exchange's Board might not someday include directors who technically qualify as Industry Directors, or the number of such directors is otherwise reduced below current levels,[17] the Exchange's proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[18] Specifically, at all times, at least 20% of the directors serving on the Board will be Representative Directors nominated (or otherwise selected through the petition process) with the input of Trading Permit Holders (or persons associated with Trading Permit Holders) as provided in the proposed Section 3.2 of the Bylaws.

The Commission has previously approved proposals in which an exchange's board of directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the ''fair representation'' requirement in the selection and election of directors.[19]

(b) Nomination of Representative Directors and Fair Representation

As proposed, the Exchange Bylaws will continue to require that at least 20% of CBOE's directors must be Representative Directors. However, in light of the changes that the Exchange proposed to the composition of the Board, the Exchange revised the nomination process for the Representative Directors. First, the Exchange proposed to incorporate into the Bylaws the concept of a RDNB,[20] which would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC or the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has less than two Industry Directors. Second, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors.[21] In addition, CBOE proposed to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election.[22]

The Commission believes that the Exchange's proposed changes to the nomination process for the Representative Directors are consistent with Section 6(b) of the Act,[23] including

[10] *See* Section 3.1 of the Exchange Bylaws.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(3).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[17] In the Notice, the Exchange stated that it has not made a determination as to whether it will reduce (or eliminate) the number of directors on its Board who qualify as an Industry Director and that it recognizes the importance of having directors who have industry expertise and knowledge (whether those directors are Industry Directors or Non-Industry Directors). *See* Notice, *supra* note 4, at 69781.

[18] 15 U.S.C. 78f(b)(3).

[19] *See, e.g.,* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR–NYSE–2003–34).

[20] *See supra* note 9 and accompanying text.

[21] In the Notice, the Exchange explained that it proposed this change because it is possible that at some point in the future CBOE's Board may not have Industry Directors serving on it. *See* Notice, *supra* note 4, at 69781.

[22] In the Notice, the Exchange explained that it proposed this change because it would provide the Exchange, the NGC, and the RDNB with additional flexibility and enable the exchange to complete the process for determining its nominees for Representative Director positions at an earlier point in time without changing the time period, as well as synchronize CBOE's nomination process with the nomination process of its parent company, CBOE Holdings. *See* Notice, *supra* note 4, at 69782.

[23] 15 U.S.C. 78f(b).

Section 6(b)(3) of the Act.[24] As discussed above, currently the Exchange satisfies the fair representation requirement by having on its Board at least 20% Representative Directors. As a result of the proposed changes to the composition of the Board, the NGC could have fewer than two Industry Directors, in which case the Industry Director Subcommittee would not be formed.[25] Under this scenario, the RDNB would be the Trading Permit Holders Subcommittee of the Advisory Board (consisting of at least two members who are Trading Permit Holders (or persons associated with Trading Permit Holders)) [26] and would provide a mechanism for Trading Permit Holders to have input with respect to the nominees for Representative Directors. Pursuant to Bylaws Section 6.1, members of the Advisory Board are recommended by the NGC for approval by the Board. The proposed change leaves intact the current process to nominate and elect Representative Directors, but is intended to accommodate the need for member input in the nomination of Representative Director candidates in the event that the Board does not contain a sufficient number of Industry Directors to empanel the Industry Director Subcommittee.

Further, with respect to the proposed changes to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election, the Commission believes that such changes generally preserve the current schedule with respect to the various milestones in the process, while allowing the Exchange to shift slightly the start of the process. Further, the Commission notes that the proposed provision specifically provides that ''[i]n no event shall the annual meeting date each year be prior to the completion of the process for the nomination of the Representative Directors for that annual meeting as set forth in Sections 3.1 and 3.2.'' [27]

(c) Amendments Relating to the Advisory Board and Fair Representation

As stated above, the Exchange proposed to amend Section 6.1 of the Bylaws to provide that the Exchange ''will'' (as opposed to ''may'') have an Advisory Board, which shall advise the Board of Directors in addition to the Office of the Chairman regarding matters that impact Trading Permit Holders.[28] CBOE also proposed to amend Section 6.1 of its Bylaws to expressly provide that at least two members of the Advisory Board shall be Trading Permit Holders or persons associated with Trading Permit Holders.[29] By providing for the mandatory establishment of the Advisory Board and for the mandatory inclusion of at least two Trading Permit Holders or persons associated with Trading Permit Holders in the Advisory Board, the Exchange's proposal is designed to facilitate the provision of input by industry members and Trading Permit Holders into the selection of its directors and administration of its affairs, consistent with Section 6(b)(3) of the Act.[30]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–CBOE–2011–099), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32602 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[25] *See* Section 4.4 of the Exchange Bylaws.

[26] *See infra* note 29 and accompanying text.

[27] *See* Section 2.2 of the Exchange Bylaws.

[28] In the Notice, the Exchange explained that it recently established an Advisory Board. *See* Notice, *supra* note 4, at 69781.

[29] In the Notice, the Exchange noted that the Advisory Board provides a mechanism for Trading Permit Holders to provide industry feedback to CBOE's Chairman and CEO, Executive Vice Chairman, President and Lead Director, all of whom are members of the Advisory Board, consistent with Section 6(b)(3) of the Act. *See* Notice, *supra* note 4, at 69781.

[30] 15 U.S.C. 78f(b)(3).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65964; File Nos. SR–EDGA–2011–29; SR–EDGX–2011–28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, Relating to Amendments to EDGA and EDGX Rules Regarding the Registration and Obligations of Market Makers

December 15, 2011.

I. Introduction

On August 30, 2011, EDGA Exchange, Inc. and EDGX Exchange, Inc. (''EDGA'' and ''EDGX,'' or ''Exchanges'') 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] proposed rule changes relating to amendments to EDGA and EDGX rules regarding the registration and obligations of market makers.[3] The proposed rule changes were published for comment in the **Federal Register** on September 16, 2011.[4] On December 14, 2011, the Exchanges each filed an Amendment No. 1 to their respective proposed rule changes (''Amendments No. 1'').[5] The Commission received no comment letters regarding the proposals. This order approves the proposed rule changes, as modified by the Amendments No. 1.

II. Description of the Proposals

The Exchanges propose to amend Chapter XI of their rulebooks to add new rules regarding the registration and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule changes, and the rules affected by them, in the EDGA and EDGX rulebooks are identical, so all proposed changes and references to any rule apply to both of the Exchanges.

[4] *See* Securities Exchange Act Release No. 65315 (September 12, 2011), 76 FR 57772 (September 16, 2011) (SR–EDGX–2011–28); Securities Exchange Act Release No. 65316 (September 12, 2011), 76 FR 57787 (September 16, 2011) (SR–EDGA–2011–29) (''Notices'').

[5] Amendments No. 1 amended the proposed rule changes to delete proposed Rule 11.21(e), which would have allowed the Exchanges, upon the request of a Market Maker, to enter, refresh, cancel and re-enter, under specified circumstances, two-sided quotations on behalf of the market maker at prices within a Designated Percentage (defined below) away from the then-current NBBO. The filings were previously noticed by the Commission for public comment in their entirety. Amendments No. 1 removed an optional automated quotation functionality, a change that does not alter the substance of the remainder of the proposals. For these reasons, the amendments are not subject to notice and comment.

obligations of market makers. The Exchanges also propose to amend Rule 14.1, entitled ''Unlisted Trading Privileges,'' to restrict trading activities of Market Makers, and impose a series of reporting and record-keeping requirements on them. Lastly, the Exchanges propose to amend Rule 8.15, Interpretation .01, to expand the list of violations eligible for disposition under the Exchanges' Minor Rule Violation Plans (''MRVP'').

A. Registration of Market Makers

The Exchanges propose to give Members the option to register as Market Makers, which would require them to submit applications in the form prescribed by the Exchanges. The Exchanges would review the applications by considering several factors, including the capital, operations, personnel, technical resources, and disciplinary history of the applicant. The Exchanges would require each Market Maker to have and maintain the minimum net capital of at least the amount required by Rule 15c3–1 under the Act.[6] An applicant's registration as a Market Maker would become effective upon receipt by the Member of the notice of approval of registration from one of the Exchanges. The Exchanges would designate registered Market Makers as dealers for all purposes under the Act, and the rules and regulations thereunder.

The Exchanges could suspend or terminate the registration of a Market Maker if the Exchange(s) determine(s) that the Market Maker: Substantially or continually fails to engage in dealings in accordance with Exchange Rules, fails to meet the minimum net capital conditions, fails to maintain fair and orderly markets, or does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified[7] to perform market making activities.[8] Any Market Maker could also withdraw its registration, subject to any minimum prior notice period or other conditions on withdrawal and re-registration the Exchange(s) deem(s) appropriate to maintain fair and orderly markets.

B. Registration of MMATs

The Exchanges propose to require that each registered Market Maker have at least one registered MMAT, which would require Market Makers to submit applications in the form prescribed by the Exchanges. MMATs could be officers, partners, employees, or other associated persons of Market Makers. However, to be eligible for registration as a MMAT, a person must successfully complete the training and other programs required by the Exchanges and the General Securities Representative Examination (*i.e.,* Series 7) or equivalent foreign examination module approved by the Exchanges. The Exchanges would require Market Makers to ensure that their MMATs are properly qualified to perform market making activities, and the Exchanges could grant a person conditional registration as a MMAT as appropriate in the interests of maintaining a fair and orderly market. Once registered, MMATs could enter orders only for the account of the Market Maker for which they are registered.

In addition, the Exchanges could suspend or terminate the registration of a MMAT if the Exchange(s) determine(s) that the MMAT has caused the Market Maker to fail to comply with the federal securities laws, and the rules and regulations thereunder, or the rules of the Exchange(s), or if the MMAT fails to perform his or her responsibilities properly or fails to maintain fair and orderly markets.[9] If a MMAT is suspended, the Market Maker could not allow the MMAT to submit orders. A Market Maker could also withdraw the registration of a MMAT by submitting to the Exchange(s) a written request on a form prescribed by the Exchange(s).

C. Registration of Market Makers in a Security

The Exchanges propose to require Market Makers to register in the securities for which they would make markets. A Market Maker could register in a newly authorized security or in a security already admitted to dealings on the Exchange(s) by filing a security registration form with the Exchange(s). Registration in the security would become effective on the same day that the Exchange(s) approve(s) the registration, unless otherwise provided by the Exchange(s). In considering the approval of the registration of the Market Maker in a security, the Exchange(s) could consider the financial resources available to the Market Maker, the Market Maker's experience and past performance in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of satisfactory clearing arrangements for the Market Maker's transactions, and the character of the market for the security. The Exchange(s) could suspend or terminate the registration of a Market Maker in any security whenever the Exchange(s) determine(s) that the Market Maker has not met one or more of its obligations, including a failure to maintain fair and orderly markets.[10] A Market Maker also could voluntarily terminate its registration in a security by providing the Exchange(s) with a written notice of such termination, subject to any minimum prior notice period or other conditions on termination and re-registration the Exchange(s) deem(s) appropriate.[11]

D. Market Maker Obligations

The Exchanges propose to establish market maker obligations. In general, Market Makers would have to engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchanges. The responsibilities of a Market Maker would include, without limitation: Remaining in good standing with the Exchange(s) and in compliance with all applicable rules of the Exchange(s); informing the Exchange(s) of any material change in its financial or operational condition or personnel;[12] maintaining a current list of MMATs and providing any updates to such list to the Exchange(s) upon any change in MMATs; and clearing and settling transactions through the facilities of a registered clearing agency.[13] Market Makers would be responsible for the acts and omissions of their MMATs. If the Exchanges were to find any substantial or continued failure by a Market Maker to engage in a course of dealing as specified, such Market Maker

[6] 17 CFR 240.15c3–1.

[7] A MMAT whose registration is suspended would not be deemed qualified.

[8] A Market Maker could appeal a suspension or termination pursuant to the procedures in Chapter X of the Exchanges' rules.

[9] A MMAT could appeal a suspension or termination pursuant to the procedures in Chapter X of the Exchanges' rules.

[10] A Market Maker could appeal a suspension or termination pursuant to the procedures in Chapter X of the Exchanges' rulebooks.

[11] A Market Maker that fails to give advanced written notice of termination to the Exchange(s) may be subject to formal disciplinary action pursuant to Chapter VIII of the Exchanges' rules.

[12] The Exchanges propose to include an interpretation that would remind Market Makers that, in connection with the obligation to ''inform the Exchange of any material change in financial or operational condition,'' the Market Makers would also be obligated to submit to the Exchange(s) a copy of a notice sent to the Commission pursuant to Rule 17a–11 under the Act. 17 CFR 240.17a–11. The notice to the Exchanges would have to be sent concurrently with the notice sent to the Commission. *See* proposed Rule 11.21, Interpretation .01.

[13] Market Makers could satisfy the clearance and settlement requirement by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another Member that clears trades through such agency.

would be subject to disciplinary action, or suspension or revocation of its registration.

The Exchanges also propose to require that Market Makers maintain continuous, two-sided quotations within a designated percentage of the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively, ''NBBO'') (or, if there is no NBB or NBO, the last reported sale). The Exchanges represent that these Market Maker quotation requirements would be intended to eliminate trade executions against Market Maker quotations priced far away from the inside market, commonly known as ''stub quotes.'' [14] The Exchanges further represent that the quotation obligations also would be intended to augment and work in relation to the single stock circuit breakers already in place on a pilot basis for stocks in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products (the ''Original Circuit Breaker Securities'').[15] Permissible quotes would be determined by the individual character of the security, the time of day in which the quote is entered, and other factors.

For issues subject to an individual stock trading pause under the applicable rules of a primary listing market, a permissible quote (also known as ''Designated Percentage'') would be as follows: (i) A Market Maker's quotes in the Original Circuit Breaker Securities shall not be more than 8% away from the NBBO; (ii) a Market Maker's quotes in NMS securities (as defined in Rule 600 of Regulation NMS) [16] that are not Original Circuit Breaker Securities with a price equal to or greater than $1 shall not be more than 28% away from the NBBO; and (iii) a Market Maker's quotes in NMS securities that are not Original Circuit Breaker Securities with a price less than $1 shall not be more than 30% away from the NBBO. For times during Regular Trading Hours [17] when stock pause triggers are not in effect under the rules of the primary listing market (*e.g.,* before 9:45 a.m. and after 3:35 p.m. Eastern Time), the Designated Percentage shall be 20% for Original Circuit Breaker Securities, 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.

Once a compliant quote is entered, it could rest without adjustment until such time as it moves to within 9.5% away from the NBBO for Original Circuit Breaker Securities, 29.5% away from the NBBO for NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 31.5% away from the NBBO for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1 (''Defined Limit''), whereupon the Market Maker would have to immediately adjust its quote to at least the permissible default level of 8%, 28%, or 30%, respectively, away from the then-current NBBO (or last reported sale, as applicable).

The Exchanges note that scenarios may occur in which pricing at the commencement of a trading day, or at the re-opening of trading in a security that has been halted, suspended, or paused, is significantly different from pricing for the security at the close of the previous trading day or immediately prior to the halt, suspension, or pause, respectively.[18] The Exchanges represent that these pricing differentials could be the result of corporate actions that occur after the close of the previous trading day or the market's absorption of material information during the halt, suspension, or pause.[19] Based on this concern, the Exchanges believe that Market Makers should not be subject to the pricing obligations proposed herein when the last sale of the previous trading day, or immediately prior to a halt, is the only available reference price.[20] The Exchanges therefore propose that, for NMS stocks, a Market Maker would have to adhere to the pricing obligations established by this Rule during Regular Trading Hours, provided, however, that such pricing obligations: (i) Would not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) would be suspended during a trading halt, suspension, or pause, and would not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor. Nothing would preclude a Market Maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

E. Unlisted Trading Privileges

The Exchanges propose to impose restrictions on each Market Maker on the Exchange(s) (''Restricted Market Maker'') in a derivative securities product (''UTP Derivative Security'') that derives its value from one or more currencies or commodities, or from a derivative overlying one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, the Exchanges would prohibit a Restricted Market Maker in a UTP Derivative Security on the Exchange(s) from acting or registering as a market maker on any other exchange in any Reference Asset of that UTP Derivative Security, or any derivative instrument based on a Reference Asset of that UTP Derivative Security (collectively, with Reference Assets, ''Related Instruments''). Further, the Exchanges would require a Restricted Market Maker to file and keep current with the Exchange(s) (in a manner prescribed by the Exchange(s)) a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, the Exchanges would prohibit a Restricted Market Maker from having an interest in, exercising investment discretion over, or sharing in the profits and/or losses of a Related Instrument Trading Account which has not been reported to the Exchanges. In addition to the existing obligations under the Exchanges' rules regarding the production of books and records, the Exchanges would require a Restricted Market Maker, upon request by the Exchange(s), to make available any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker in which Related Instruments are traded. Lastly, the Exchanges would require that a Restricted Market Maker not use any material, non-public information in connection with trading a Related Instrument.[21]

[14] *See* Notices, *supra* note 4: 76 FR 57772 at 57774; 76 FR 57787 at 57788.

[15] *Id.*

[16] 17 CFR 242.600.

[17] *See* Rule 1.5(y) (as proposed to be re-lettered) (defining Regular Trading Hours as 9:30 a.m. to 4 p.m. Eastern Time).

[18] *See* Notices, *supra* note 4: 76 FR 57772 at 57774; 76 FR 57787 at 57789.

[19] *Id.*

[20] *Id.*

[21] The Exchanges propose to re-number current Rule 14.1(c)(5) and to replace the term ''components of the index or portfolio on which the UTP Derivative Security is based'' in Rule 14.6(c)(6) with ''Related Instruments.''

F. MRVPs

The Exchanges propose to add the continuous, two-sided quotation obligation to the list of rules which would be appropriate for disposition under the Exchanges' MRVPs, which would allow the Exchanges to impose a $100 fine for each violation. The Exchanges have represented that, by promptly imposing a meaningful financial penalty for such violations, the MRVPs focus on correcting conduct before it gives rise to more serious enforcement action, provide a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, and offer greater flexibility in handling certain violations.[22] The Exchanges further stated that a provision that would allow the Exchanges to sanction violators under the MRVPs would not minimize the importance of compliance with the continuous, two-sided quotation obligation, and that the violation of any rule is a serious matter; the addition of a sanction under the MRVPs would be an additional method for disciplining violators.[23] The Exchanges represented that they would continue to conduct surveillance with due diligence and make determinations, on a case-by-case basis, whether a violation of the continuous, two-sided quotation obligation should be subject to formal disciplinary proceedings.

III. Discussion

After careful review of the proposals, the Commission finds that the proposed rule changes are consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of an exchange be 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.

The Commission finds that the Exchanges' proposals to establish procedures for the registration, withdrawal, suspension, and termination of Market Makers and MMATs; the registration of Market Makers in a security; and Market Maker obligations are consistent with Section 6(b)(5) of the Act.[26] The proposed rules would benefit all Exchange participants because Market Makers would assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchanges, and assist in preventing excess volatility. The Commission finds that the Exchanges' rules provide objective processes by which a Member could become a Market Maker, an individual could become an MMAT, and a Market Maker could register in a security. The proposed rules also provide for appropriate oversight by the Exchanges to monitor for continued compliance by Market Makers and MMATs with the terms of those provisions. The Commission also notes that these proposals, including the Market Maker obligations, are similar to rules of other exchanges.[27] As a result, the Commission believes that these aspects of the proposals are consistent with the Act.

The Commission also finds that the provisions of the proposed rule changes that implement the continuous, two-sided quotation obligation are consistent with Section 6(b)(5) of the Act.[28] The proposed rules promote uniformity across markets concerning minimum market maker quotation requirements as this aspect of the proposals is similar to rules of other self-regulatory organizations.[29] In addition to Section 6(b)(5) of the Act,[30] the Commission finds that the continuous, two-sided quoting obligations are consistent with Section 11A(a)(1) of the Act [31] in that they seek to assure fair competition among brokers and dealers and among exchange markets. By requiring Market Makers to maintain quotes that are priced within a specified percentage of the NBBO, the proposed rules should help assure that quotations submitted by Market Makers to the Exchanges, and displayed to market participants, bear some relationship to the prevailing market price. This may reduce the risk that trades will occur at irrational prices and should promote fair and orderly markets and the protection of investors.[32]

The Commission finds that the Exchanges' proposed restrictions on the trading activities of Market Makers in UTP Derivative Securities, and the imposition of reporting and record-keeping requirements on Market Makers who trade UTP Derivative Securities are consistent with Section 6(b)(5) of the Act.[33] These proposals are closely modeled on similar rules of other exchanges, which the Commission has previously approved, and do not raise any novel issues.[34]

The Commission also finds that the Exchanges' proposals to include a Market Maker's obligation to maintain a continuous, two-sided quotation in any security in which it is registered in their MRVPs is consistent with Section 6(b)(5) of the Act,[35] and Sections 6(b)(1) and 6(b)(6) of the Act,[36] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and exchange rules. The Commission believes that the proposed changes to the MRVPs should strengthen the Exchanges' abilities to carry out their oversight and

[22] *See* Notices, *supra* note 4: 76 FR 57772 at 57775; 76 FR 57787 at 57790.

[23] *Id.*

[24] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

[27] *See, e.g.,* BATS Exchange, Inc. (''BATS'') Rules 11.5–.8; National Stock Exchange, Inc. (''NSX'') Rules 11.5–.8; *see also* Securities Exchange Act Release Nos. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR–NSX–2006–08) (approving proposed rules for the registration of market makers, obligations of market maker authorized traders, the registration of market makers in a security, and obligations of market makers), 58644 (September 25, 2008), 73 FR 57172 (October 1, 2008) (SR–BATS–2008–005) (noticing the immediate effectiveness of proposed rules for the registration and obligations of market makers based on NSX's rules).

[28] 15 U.S.C. 78f(b)(5).

[29] *See, e.g.,* BATS Rule 11.8(d); NSX Rule 11.8(a)(1); *see also* Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (approving proposed rule changes, implementing enhanced market maker quotation standards, by BATS, NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, The Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, NSX, New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc.).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1).

[32] The Commission notes, consistent with prior guidance under Regulation SHO (*See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (Aug. 6, 2004) and Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61698–99 (Oct. 17, 2008)), that a market maker's compliance with the percentage quoting requirements contained in these proposals, *i.e.,* maintaining a quote that is 8% away from the NBBO for stocks in the S&P 500, Russell 1000, and for select ETPs, would not constitute bona fide market making for purposes of claiming the applicable exceptions to the requirements of Regulation SHO.

[33] 15 U.S.C. 78f(b)(5).

[34] *See, e.g.,* BATS Rule 14.1; NASDAQ OMX Phlx LLC (''Phlx'') Rule 803(o); NSX Rule 15.9; *see also* Securities Exchange Act Release Nos. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR–Phlx–2008–34) (approving consolidation into a single rule of certain requirements for products traded on the Philadelphia Stock Exchange, Inc. (n/k/a Phlx) pursuant to unlisted trading privileges); 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR–BATS–2008–004) (noticing immediate effectiveness of consolidation into a single rule of certain requirements for products traded on BATS pursuant to unlisted trading privileges consolidation).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(1), (6).

enforcement responsibilities as SROs by promptly imposing a financial penalty in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. The Commission also notes that these proposed changes are closely modeled on the rules of other exchanges, which have been previously approved by the Commission.[37] Furthermore, the Commission believes that, because Rule 8.15 provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the proposed changes provide a fair procedure for the disciplining of Members and persons associated with Members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[38] Therefore, the Commission finds that the proposals are consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[39] which governs minor rule violation plans.

In approving these proposals, the Commission in no way minimizes the importance of compliance with the Exchanges' rules and all other rules subject to the imposition of fines under the MRVPs. The Commission believes that the violation of any SRO's rules, as well as Commission rules, is a serious matter. However, the MRVPs provide a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchanges will continue to conduct surveillance with due diligence and make determinations based on their findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVPs or whether a violation requires formal disciplinary action under the Exchanges' rules.

Finally, the Commission finds that the Exchanges' addition of definitions, re-lettering and re-numbering of rules, and replacement of certain text in Rule 14.1(c)(6) are technical in nature and consistent with the Act accordingly.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule changes (SR–EDGA–2011–29 and SR–EDGX–2011–28), as amended by Amendments No. 1, be, and hereby are,approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

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[37] *See* BATS Rule 8.15, Interpretation .01; NSX Rule 8.15, Interpretation .01.

[38] 15 U.S.C. 78f(b)(7), (d)(1).

[39] 17 CFR 240.19d–1(c)(2).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65959; File No. SR–CME–2011–17]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Rules Relating to Its Cleared Only OTC FX Swap Offering

December 15, 2011.

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 2, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to amend rules related to existing cleared-only foreign exchange (''FX'') currency derivatives products. The proposed rule changes make certain clarifying revisions and other amendments to rules that were the subject of a recent filing, SR–CME–2011–12.[3]

The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commission staff notes that SR–CME–2011–12 was previously approved pursuant to delegated authority on October 26, 2011. *See* Securities Exchange Act Release No. 65637, 76 FR 67512 (Nov. 1, 2011).

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

In late September, 2011, CME submitted proposed rule changes in filing SR–CME–2011–12 to establish rules to expand its cleared-only, foreign currency (''FX'') swaps offering to support the introduction of (1) twenty-six new foreign FX currency derivatives for over-the-counter (''OTC'') cash settlement; and (2) eleven new FX non-deliverable forward transaction currency pairs for traditional, OTC cash settlement. CME initially planned to make the rules that are the subject of this filing operational on January 3, 2012. CME has adopted a phased roll-out approach and intends to launch the products that are covered by this filing on December 19, 2011. The proposed changes associated with this filing have been identified to prepare for this roll-out. More specifically, the proposed rule changes that are the subject of this filing include: Changes to CME Rule 5.C. (Position Limit and Reportable Level table); changes to CME Chapter 300 (CME WM/Reuters OTC Spot, Forward and Swap Contracts); changes to CME Chapter 277H (Cleared OTC U.S. Dollar/Peruvian Nuevo Sol (USD/PEN) Spot, Forwards and Swaps); changes to CME Chapter 257H (Cleared OTC U.S. Dollar/Brazilian Real (USD/BRL) Spot, Forwards and Swaps); CME Chapter 260H (Cleared OTC U.S. Dollar/Russian Ruble (USD/RUB) Spot, Forwards and Swaps); CME Chapter 270H (Cleared OTC U.S. Dollar/Chinese Renminbi (USD/RMB) Spot, Forwards and Swaps); and CME Chapter 271H (Cleared OTC U.S. Dollar/Korean Won Sol (USD/KRW) Spot, Forwards and Swaps). The proposed rule text is available on CME's Web site.

The first set of proposed changes deal with CFTC position limit, accountability and reportable levels. Individual entries in CME's current Appendix to Chapter 300 provide either Position Accountability (PA) or Position Limits (PL) or a combination of both (e.g., PA

with spot month PL) depending generally on the liquidity in the underlying OTC instruments and coordinating with existing and similar FX futures and options on futures contracts. Highly liquid underlying FX pair activity enable Position Accountability trigger levels as opposed to finite limits, and less liquid underlying FX pair activity require the more restrictive Position Limits. Since FX futures, options on FX futures, cleared OTC FX spot, forwards and swaps; and OTC FX options on spot and forwards, are essentially extensions of the same market, CME rules will aggregate positions for an account holder across all of these product lines per FX pair. Notional level equivalents for existing CME FX pair futures contracts for Position Accountability and/or Position Limits are carried over to CME's Cleared OTC FX rules.

Twenty-two of the twenty-six new cleared CME WMR OTC FX products being launched on Monday, December 19, 2011, have underlying FX pair futures and/or options on futures contracts for these same FX pairs that will be listed for cleared OTC transactions (i.e., AUD/USD, USD/CHF, USD/CAD, NZD/USD, USD/NOK, USD/SEK, EUR/USD, USD/JPY, GBP/USD, USD/MXN, USD/PLN, USD/ZAR, AUD/JPY, EUR/AUD, CAD/JPY, EUR/GBP, EUR/JPY, EUR/CHF, USD/CZK, USD/HUF, USD/TRY and USD/ILS). As noted above, CME considers FX futures, options on FX futures, cleared OTC FX spot, forwards and swaps; and OTC FX options on spot and forwards, as essentially extensions of the same market, and CME rules will aggregate positions for an account holder across all of these product lines per FX pair. In instances where there are existing underlying futures and options on futures contracts for the same FX pair, CME is basing the new OTC contract Position Accountability and Position Limits rules on these underlying, existing futures and options on futures. That is, for purposes of aggregation, positions in the new cleared OTC products will be rolled up in equivalent amounts of currency specified in the corresponding FX pair futures and options on futures Position Accountability and/or Position Limits rules.

CME Chapter 300 contains new rules governing the twenty-six new CME WMR OTC CSFs that are scheduled to be launched on Monday, December 19, 2011. CME proposes to add a second sentence to the preexisting second paragraph of CME Rule 300.02.A. This additional sentence in the rule plus an analogous single-asterisked footnote added to the Chapter 300 Appendix would denote the additional step at final cash settlement, where for several asterisked FX pairs, the final calculated ''minimum fluctuation currency amount'' is converted into the ''Unit of Trading and Clearing Currency'' by dividing by the Final Settlement Price. This action would minimize the number of different currency accounts that customers will need to open in order to participate in CME's cleared OTC FX offering. For example, for 14 of the 26 new CME WMR OTC CSFs launching on December 19, 2011, the final settlement amount will be converted into USDs from CHF, NOK, SEK, DKK, MXN, SGD, PLN, ZAR, CZK, HUF, TRY, ILS, THB and HKD, eliminating the need for customers to maintain accounts in these 14 currencies. A new additional second paragraph for CME Rule 300.02.A. would denote that, in some cases, the Final Settlement Prices for a given FX pair would be calculated using the appropriate WM/Reuters Closing Spot Rates for component currency pairs. For example, the AUD/JPY Final Settlement Price will be calculated by multiplying the two WM/Reuters 4 pm London time Closing Spot Rates for AUD/USD and USD/JPY; therefore, the AUD/JPY Final Settlement Price is derived from those two FX pairs' Final Settlement Prices. Double asterisks and an explanatory footnote in the Appendix table to Chapter 300 clearly identify those FX pairs that would be calculated in this way. Lastly, for CME Rule 300.02.A., a fourth paragraph is proposed to define the movement of the final payment amount between the CME Clearing House and buyers and sellers, when the calculation of that final payment amount is positive or negative. This language had been adopted previously by CME for many of the cleared OTC FX NDF products and is being included also for the cleared CME WM/Reuters OTC FX products and those cleared OTC FX NDF offerings where CME has an underlying futures contract for the same FX pair.

CME is also proposing amendments to CME Rule 277H.02.A. (Day of Cash Settlement) to make the rule provision for number of decimals (six) of the Final Settlement Price calculation to align with the decimal notation for the minimum price increment (six).

CME is also proposing a change to CME Chapters 257H, 260H, 270H and 271H. These changes would add language to the cash settlement provisions in the rules governing four different cleared OTC FX NDF products to mirror procedures and documentation for other cleared OTC FX NDF products. The proposed rule changes are designed to define movement of the final payment amount at termination between CME Clearing and the buyers and sellers in the transaction. The proposed changes impact the OTC USD/RUB, USD/BRL, USD/CNY and USD/KRW non-deliverable forwards products.

CME is also making a filing, CME Submission 11–463, with its primary regulator, the Commodity Futures Trading Commission, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act because they involve clearing of swaps and thus relate solely to CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. The proposed rule changes accomplish those objectives by offering investors clearing for a range of FX OTC swap products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*.

Please include File No. SR–CME–2011–17 on the subject line.

• Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2011–17. This file number should be included on the subject line if email 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 Web site viewing and printing 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 CME. 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–CME–2011–17 and should be submitted on or before January 11, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

In its filing, CME requested that the Commission approve this request on an accelerated basis for good cause shown. CME has articulated three reasons for granting this request on an accelerated basis. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes relate solely to FX swap clearing and therefore relate solely to its swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

Section 19(b) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[5] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing FX swaps, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[6]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[7] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the swap clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2011–17) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32585 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65954; File No. SR–NYSE–2011–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting the Text of Financial Industry Regulatory Authority Rule 5210, Which Prohibits the Publication of Manipulative or Deceptive Quotations or Transactions, as NYSE Rule 5210

December 14, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that December 7, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt the text of Financial Industry Regulatory Authority (''FINRA'') Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Rule 5210. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 self-regulatory organization 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

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt the text of FINRA Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Rule 5210.[4]

Background

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a Regulatory Services Agreement under which FINRA agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. On June 14, 2010, FINRA also assumed responsibility for performing the market surveillance and enforcement functions performed by NYSER. To facilitate FINRA's performance of these enforcement functions and further harmonize the rules of FINRA and NYSE, NYSE is proposing to adopt the text of FINRA Rule 5210.[5] FINRA Rule 5210 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security, unless such member believes that such transaction was a bona fide purchase or sale of such security. The Rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless the member believes that such quotation represents a bona fide bid for, or offer of, such security.

The Exchange believes that the proposed rule change will strengthen FINRA's ability to bring sanctions on behalf of the Exchange against a member organization for engaging in manipulative forms of quoting behavior, for example, quote stuffing and layering. FINRA Rule 5210 (formerly NASD Rule 3310 and IM 3310)[6] was successfully used in the Acceptance, Waiver and Consent announced in September 2010 by FINRA against Trillium Brokerage Services and other individual Respondents.[7] The Exchange believes that the proposed rule change would augment FINRA's ability on behalf of the Exchange to take action against manipulative quoting behavior on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] 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 mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change would provide an additional basis for bringing enforcement actions against Exchange member organizations that engage in deceptive and manipulative quoting activity. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the FINRA Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to more effectively carry out its enforcement activities on behalf of the Exchange. Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[4] *See* Securities Exchange Act Release No. 60835 (Oct. 16, 2009), 74 FR 54616 (Oct. 22, 2009) (SR–FINRA–2009–055). The Exchange's affiliates, NYSE Amex LLC and NYSE Arca, Inc., are proposing to adopt a substantially similar rule.

[5] For consistency with Exchange rules, the Exchange proposes to change all references from ''member'' to ''member organization.''

[6] *See supra* n. 4.

[7] *See http://www.finra.org/web/groups/industry/@ip/@enf/@ad/documents/industry/p122044.pdf.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR- NYSE–2011–61. This file number should be included on the subject line if email 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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR–NYSE–2011–61 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32584 Filed 12–20–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65963; File No. SR–NASDAQ–2011–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Describe Complimentary Services That Are Offered to Certain New Listings on NASDAQ's Global and Global Select Markets

December 15, 2011.

I. Introduction

On August 30, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' 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 describe services offered by NASDAQ to certain newly listing companies on NASDAQ's Global and Global Select Markets. The proposed rule change was published in the **Federal Register** on September 16, 2011.[3] The Commission originally received five comment letters from three commenters on the proposal.[4] NASDAQ submitted a letter in response to these comments.[5] The Commission received three additional comment letters on November 30, 2011, December 8, 2011, and December 13, 2011.[6] On October 28, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 15, 2011.[7] This order grants approval of the proposed rule change.

II. Description of the Proposal

In its filing, NASDAQ is proposing to amend its rules to include new Section IM–5900–7 to describe products that are offered to certain newly listing companies. As discussed in more detail below, NASDAQ proposes to offer complimentary products and services to companies listing on NASDAQ's Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'').[8] Additionally, NASDAQ proposes to offer such services to companies that switch their listing from the New York Stock Exchange (''NYSE'') to NASDAQ's Global or Global Select Markets (''Eligible Switches''). In its filing, NASDAQ also noted that all NASDAQ-listed companies, including companies listed on the Capital Market, receive access to NASDAQ's Market Intelligence Desk and NASDAQ Online.

The Exchange is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). NASDAQ proposes to offer these products and services through NASDAQ OMX Corporate Solutions, Inc. (''Corporate Solutions''), also a subsidiary of NASDAQ OMX and an affiliate of the Exchange.[9] According to NASDAQ, Corporate Solutions offers products and programs to private and public companies, including companies listed on the Exchange, designed to enhance transparency, mitigate risk, maximize efficiency and facilitate better corporate governance. Pursuant to the proposal, Eligible New Listings and Eligible Switches with a market capitalization of up to $500 million would receive the following services for two years from the date of listing, having a total retail value of approximately $93,500 per year,[10] and would receive a waiver of one-time development fees of approximately $4,000 to establish the services:

- *Governance Services*
  - *Board Tools:* Use of Directors Desk for up to 10 users, with an approximate retail value of $20,000 per year.

[13] 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. 65324 (September 12, 2011), 76 FR 57781 (''Notice'').

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Neil Hershberg, Senior Vice President, Business Wire Inc., received September 28, 2011 (''Business Wire Letter 1''); John Viglotti, Vice President, PR Newswire Association LLC, received October 7, 2011 (''PR Newswire Letter''); Jesse W. Markham, Jr., Roger Myers, and Michael R. MacPhail, Holme Roberts & Owen LLP (''Holme Roberts'') (writing on behalf of Business Wire, Inc.), dated October 7, 2011 (''Business Wire Letter 2''); Patrick Healy, CEO, Issuer Advisory Group LLC, dated October 22, 2011 (''Issuer Advisory Letter''); and Holme Roberts Letter, dated November 15, 2011 (''Business Wire Letter 3'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX, dated November 15, 2011 (''NASDAQ Response Letter'').

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, New York Stock Exchange LLC, dated November 30, 2011 (''NYSE Letter''); Holme Roberts Letter, dated December 8, 2011 (''Business Wire Letter 4''); and Email from Dominic Jones, IR Web Reporting International Inc., dated December 13, 2011 (''IR Letter'').

[7] *See* Securities Exchange Act Release No. 65653 (October 28, 2011), 76 FR 68237 (November 3, 2011).

[8] NASDAQ represented that, under the proposal, a company transferring from the OTCBB or Pink Sheets or from the Capital Market would not be eligible to receive these services. *See* Notice *supra* note 3.

[9] In its filing, NASDAQ stated its belief that Corporate Solutions is not a ''facility'' of the Exchange as defined in 15 U.S.C. 78c(a)(2), and noted that its proposed rule change is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange. *See* Notice *supra* note 3. The Commission notes that the definition of a ''facility'' of an exchange is broad under the Act, and ''includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange . . . and any right of the exchange to the use of any property or service.'' The Commission further notes that any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.

[10] Retail values are based on Corporate Solutions' current price list. If a company does not fully use the services offered in a year, unused services do not carry forward into future years and cannot be used to offset the costs of other services or listing fees.

○ *Whistleblower Hotline:* Use of a financial reporting hotline that provides employees and others with fully-automated means of reporting incidents and concerns, with an approximate retail value of $3,500 per year.

• *Communications Services*

○ *Investor Relations Web site:* Use of a Web site with all the necessary content and features to communicate with investors, including a corporate governance library containing documents such as the Board committees' charters and the company's code of ethics, with a retail value of approximately $16,000 per year.

○ *Press Releases:* Companies will be provided $15,000 worth of distribution services for earnings or other press releases, including photographs, and filing of EDGAR and XBRL reports. The actual number of press releases will vary based on their length and the regional distribution network chosen by the company.

• *Intelligence Services*

○ *Market Analytic Tools:* Use of a market analytic tool, which integrates corporate shareholder communications, capital market information, investor contact management, and board-level reporting into a unified workflow environment for up to four users, including information about research and earnings estimates on the company and help identifying potential purchasers of the company's stock using quantitative targeting and qualitative insights, with an approximate retail value of $39,000 per year.

Under the proposal, Eligible New Listings and Eligible Switches with a market capitalization of $500 million or more would receive the services described above, including the waiver of one-time development fees, and the additional services described below, worth a total retail value of approximately $169,000 per year.[11] Eligible New Listings with a market capitalization of $500 million or more would receive all services for two years from the date of listing, and Eligible Switches with a market capitalization of $500 million or more would receive all services for four years from the date of listing:

• *Governance Services*

○ *Board Tools:* An additional five licenses for Directors Desk, with a retail value of approximately $10,000 per year.

• *Communications Services*

○ *Press Releases:* An additional $5,000 worth of distribution services.

• *Intelligence Services*

○ *Market Surveillance Tools:* A stock surveillance package, that includes monitoring the daily movement and settlement activity of the company's stock, providing alerts on increases in trading volume and block trading activity, and offering color to any unusual change in stock price, with an approximate retail value of $60,000 per year. To fully utilize this service, NASDAQ states that companies will have to subscribe to, and separately pay for, certain third party information, which is not included.[12]

The Exchange represents that it is proposing to offer four years of services to Eligible Switches with a market capitalization of $500 million or more, as opposed to two years of services as is the case for other Eligible Switches and Eligible New Listings, because the Exchange believes that the issuers receive comparable services from the NYSE, which the issuer would forego by switching their listing to NASDAQ, and that those issuers will likely bring greater future value to NASDAQ than will other issuers by switching to its market.[13]

III. Summary of Comments and NASDAQ Response to Comments

Four commenters raised objections to the proposal,[14] while one commenter supported the proposal.[15]

The commenter supporting the proposal believed that ''NASDAQ's presence in the market has been good for competition. * * *'' [16] This commenter noted that ''NYSE's favored service providers dominate the IR services industry'' and that of the ''companies in the Nasdaq-100 index, only 10 used NASDAQ's PR wire service. * * * The remaining companies overwhelmingly used Business Wire or PR Newswire. . . .'' [17]

Two commenters generally expressed concern that NASDAQ's proposal would harm competing suppliers of information dissemination and investor relations (''IR'') services, adversely affect competition, and result in economic coercion of and unfair discrimination among issuers.[18] These two commenters dispute NASDAQ's comparison of its proposal to the recently approved rule change by the NYSE regarding complimentary services provided to issuers.[19] These commenters argue that the proposals are fundamentally different in that NYSE offers IR services though a variety of independent service providers, while NASDAQ's proposal only offers one affiliated service provider.[20] These commenters argue that NASDAQ's proposal effectively penalizes any company eligible for the free services that chooses to use a NASDAQ competitor.

These two commenters urge the Commission to reject the proposal because it would create an inequitable allocation of listing fees. One commenter states that the proposal would create a significant disparity between what otherwise indistinguishable companies pay and receive for their listing fees.[21] This commenter alleges that the proposal would result in an inequitable allocation with respect to fees paid by issuers that are currently listed and that are not being offered the free services under the proposal, versus newly listed companies that are being offered the free services.[22] The commenter disputes NASDAQ's justification of providing complimentary services to newly listing companies to help them adjust to the new responsibilities of being a publicly trading company, and conversely believes that NASDAQ is attempting to lock in newly listed companies into using Corporate Solutions once the free services expire.[23] Additionally, the commenter argues that offering complimentary services to issuers that switch their listings from the NYSE to NASDAQ discriminates among issuers and inequitably allocates listing fees among more mature companies.[24] The commenter also argues that a company that lists on NASDAQ and uses the complimentary IR services provided by Corporate Solutions effectively pays a lower listing fee than a similarly situated company that opts for IR services provided by another vendor.[25] Accordingly, the commenter believes that by bundling the listing fee with the IR services, NASDAQ is distorting the new listing fees paid by a company that opts to use a competing IR vendor,

[11] *Id.*

[12] For example, companies would have to purchase position reports from the Depositary Trust Corporation.

[13] *See* e-mail from Arnold Golub, NASDAQ, to Sharon Lawson, Division of Trading and Markets, Commission, dated December 8, 2011 (''NASDAQ E–Mail'').

[14] *See supra* notes 4 and 6.

[15] *See* IR Letter.

[16] *Id.*

[17] *Id.*

[18] *See* Business Wire Letter 1, Business Wire Letter 2, and PR Newswire Letter.

[19] *See* Business Wire Letter 1 and PR Newswire Letter.

[20] *See* Business Wire Letter 4 (noting that this is the first time the Commission will be ruling on the permissibility of an exchange subsidizing IR services provided by its own providers).

[21] *See* Business Wire Letter 1.

[22] *See* Business Wire Letter 2.

[23] *Id.*

[24] *Id.*

[25] *Id.*

resulting in an inequitable allocation of fees among issuers.[26]

These two commenters also urge the Commission to reject the proposal because it will impose an unnecessary burden on competition in the IR services market.[27] These commenters argue that the proposal to bundle the complimentary services with listings is a form of unlawful tying.[28] One of these commenters argues that the proposal creates an uneven playing field in the market, distorts competition, and results in NASDAQ coercing issuers to use the services simply because they are free, even if they may not be the company's choice or meet its buying criteria.[29] One commenter notes that rival service providers could not possibly compete because they cannot offer IR services for free without the possibility of subsidizing the fees with listing fees.[30]

One of these commenters argues that the proposal will burden competition in apparent violation of the antitrust laws.[31] Specifically, the commenter alleges that NASDAQ's bundling of IR services with its listing service is an illegal ''tying'' in violation of Section 1 of the Sherman Act. According to the commenter, a tying arrangement violates Section 1 of the Sherman Act ''if the seller has appreciable economic power in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market.'' [32] The commenter believes that NASDAQ's free or discounted services meets the legal standard of a tying arrangement because NASDAQ, by offering complimentary Corporate Solution services to listing customers through its subsidiary, is tying the two services together, so that Eligible New Listings or Eligible Switches will treat NASDAQ's listing service and its free services as a single unit and direct their business to Corporate Solutions since they are already incurring that cost.[33]

The commenter also believes that NASDAQ has sufficient market power to coerce at least a substantial number of newly listing companies to use the tied product because ''NASDAQ, in its regulatory role, will, on the one hand, be informing new public companies of their public disclosure obligations while, on the other, be offering to provide them those very disclosure services for free.'' [34] The commenter further argues that competition for IR services will not remain robust if NASDAQ is allowed to use its market power with respect to NASDAQ listings to eliminate meaningful competition.[35] Further, the commenter believes that the amount of commerce affected in the IR services market is far above the ''not insubstantial'' requirement of the Sherman Act, noting that the threshold requirement is so modest it is always conceded.[36]

Separately, the commenter alleges that, by offering the Corporate Solutions services for two to four years, NASDAQ has demonstrated an attempt to monopolize in violation of Section 2 of the Sherman Act.[37] According to the commenter, offering the services for free—clearly below marginal cost—is predatory/anti-competitive conduct.[38] Additionally, the commenter believes that NASDAQ's intent to monopolize can be inferred by the fact that NASDAQ OMX, as owner of both a national securities exchange and a subsidiary that provides information dissemination services (''IDS'') and IR services, has an advantage and that by offering free IR services to listed companies through its subsidiary, NASDAQ OMX is acting to drive out competing IDS and IR vendors for new listings and ultimately for all NASDAQ-listed companies.[39] Finally, the commenter claims that once competitors are shut out of the IDS and IR market, Corporate Solutions would have an unfettered ability to raise prices and/or compromise service levels to the detriment of listed companies and the investing public—achieving monopoly power.[40]

The commenter also is concerned that the proposal could reduce pricing transparency, stating that historically, listed companies have paid separate, transparent fees for listing services and ancillary IR services, but that NASDAQ's proposal, by combining both services, ''blurs the line between the core mandatory and auxiliary services'' and makes it unclear, for example, the extent to which listing fee increases are cross-subsidizing IR services.[41]

Two commenters state that NASDAQ's offering of IR services creates a conflict of interest with respect to its role as a self-regulatory organization (''SRO'').[42] One commenter believes that NASDAQ's authority in determining the adequacy of public disclosures by listed companies makes it inappropriate for NASDAQ's sister company to be the ''preferred provider'' for such disclosure services.[43] In addition, this commenter believes that because NASDAQ is in a position to determine how much disclosure is required, it could manipulate the quantity of disclosures, such as reducing the amount of disclosures required to save costs during the period when such services are being offered for free and increasing the amount of disclosure required once such services are being paid for.[44] In addition, this commenter argues that because NASDAQ has taken on this ancillary business of providing IR services, it may have an incentive to fund this services business to the detriment of its regulatory obligations.[45] The commenter argues that these conflicts are particularly high given that NASDAQ's IR services providers do not have an independent sales force and that NASDAQ's sales representatives market these IR services in addition to selling listings.[46] Accordingly, the commenter believes that not only should NASDAQ's proposal be rejected, but that the Commission should review NASDAQ's role in providing IR services and consider requiring NASDAQ OMX to divest its Corporate Solutions business or require Corporate Solutions to sell its IR service providers to an independent third party, or, alternatively, order NASDAQ to operate its Corporate Solutions business on a strict arms-length basis.[47]

Another commenter recommends that the Commission disapprove the proposed rule change and request that the listing exchanges consider the idea of offering free listings or, alternatively, that the Commission appoint an independent task force comprised of issuers to recommend a model that would permit the exchanges to provide unlimited value-added services.[48] This commenter believes that NASDAQ's proposal inhibits competition for listings, would result in the equivalent of a maximum service cap and would be

[26] *Id.*

[27] *See* Business Wire Letter 2 and PR Newswire Letter.

[28] *See* Business Wire Letter 1 and PR Newswire Letter.

[29] *See* PR Newswire Letter.

[30] *See* Business Wire Letter 1.

[31] *See* Business Wire Letter 2 and Business Wire Letter 4. According to Business Wire, NASDAQ is seeking approval of its ongoing practice of tying free services to listed companies. *See* Business Wire Letter 3 and Business Wire Letter 4.

[32] *See* Business Wire Letter 2.

[33] *Id.*

[34] *Id.*

[35] *See* Business Wire Letter 4.

[36] *See* Business Wire Letter 2.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *See* Business Wire Letter 2 and PR Newswire Letter (expressing concern that this could effectively coerce an issuer into using the SRO's services).

[43] *See* Business Wire Letter 2.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *See* Issuer Advisory Letter.

used by exchange as a justification for limiting their service offerings.[49]

One commenter objects to the provision by NASDAQ of free IR services to Eligible Switches with a market capitalization of $500 million for four years, while New Listings with the same market capitalization would only receive such services for two years under the proposal.[50] This commenter argues that treating Eligible Switches differently from Eligible New Listings and existing NASDAQ listed issuers unfairly discriminates between issuers in violation of Section 6 of the Act.[51] This commenter states that issuers transferring their listing from NYSE to NASDAQ are not a separate class of issuer, and giving Eligible Switches preferential treatment results in unfair discrimination.[52] The commenter further argues that the proposed fee structure is not an equitable allocation of reasonable fees among issuers, and therefore violates Section 6(b)(4) of the Act, because for four years an Eligible Switch would be paying substantially lower fees than any company of the same capitalization already listed on NASDAQ or, for the final two years, any Eligible New Listing.[53] The commenter does not believe that it is equitable to treat issuers differently simply because one transferred from another exchange.[54] This commenter requests that if the proposed rule is approved by the Commission, that the Commission clarify that the rule encompasses the complete set of products and services that NASDAQ is allowed to provide Eligible New Listings and Eligible Switches, and that after the two or four year periods covered by the rule have expired, companies may only be provided with services that are applicable to all other listed companies as set forth in NASDAQ's rules.[55] In addition, to the extent that NASDAQ is currently in discussions with companies to list on NASDAQ, the commenter requests that the Commission direct NASDAQ to treat such issuers in accordance with the proposed rule, and prohibit NASDAQ from offering additional or different products or services, even if an issuer lists prior to the proposed rule being approved.[56] Finally, the commenter requests the Commission to clarify that companies listed on NASDAQ within the two or four years (as applicable) prior to the rule's passage will be subject to the new rule, and to require NASDAQ to amend any agreements relating to services that such issuers may currently have in order to conform services to the proposed rule.[57]

In the NASDAQ Response Letter, the Exchange responded to many of the issues raised by the commenters.[58] In response to commenter concerns that the proposal limits issuer choice regarding service providers and is unlawfully tying IR services to a company's listing, NASDAQ reiterates that no issuer is required to use the offered services, and to the extent that a company chooses to use the services, such services are provided only for a limited time.[59] Further, the Exchange argues that the NASDAQ proposal is similar to the Commission-approved NYSE proposal,[60] because the NYSE proposed rule change does not allow issuers unlimited choice as to which service providers they can choose, as NYSE issuers must use those providers selected by the exchange, with no transparency as to the selection process or the financial arrangement between the NYSE and the service provider.[61] NASDAQ also states that by relying on services provided by an affiliated entity, rather than third parties, NASDAQ gains greater control to assure it can provide the products most valued by companies in a high quality manner.[62]

In response to claims that the proposal creates an inequitable allocation of listing fees, the Exchange states that its proposal is consistent with Section 6(b)(4) of the Act, because offering different services based on a company's market capitalization is appropriate given that larger companies generally will need more and different governance, communication and intelligence services. NASDAQ additionally believes that the distinction based on market capitalization is clear and transparent. NASDAQ also states that offering the complimentary services to newly listing companies and not to companies already listed on NASDAQ is appropriate given that the services offered will help ease the transition of becoming a public company and will help these companies fulfill their new responsibilities as public companies.[63] NASDAQ counters the concern that the proposal results in unfair discrimination in violation of Section 6(b)(5) of the Act, stating that it offers its program only to companies switching from the NYSE, and not from other exchanges or unlisted markets or to companies already listed on NASDAQ, because the companies listed on the NYSE receive comparable services from the NYSE (and not from other exchanges), which they would forego by switching their listing to NASDAQ,[64] and because NASDAQ believes attracting NYSE listed companies will bring greater future value to NASDAQ.

NASDAQ also disputes allegations that it illegally ties its Corporate Solutions services to a company's listing on NASDAQ, asserting that companies wishing to list on NASDAQ are not forced to use services provided by NASDAQ, since neither the receipt of such services nor a NASDAQ listing are conditioned on the other.[65] NASDAQ attached a prior response letter from its outside counsel on an earlier filing that addresses the antitrust claims and notes that antitrust laws ''were enacted for the protection of competition not competitors.'' [66]

Finally, NASDAQ represents that it achieves separation between its business and regulatory conflicts by appropriately distinguishing the regulatory functions from the influence of business considerations.[67] According to the Exchange, it houses its regulatory functions, including the Listing and Market Watch Departments, in a regulatory group that is organizationally and institutionally separate from its business lines.[68] NASDAQ also notes that this structure, its effectiveness in managing conflicts, and the effectiveness of the regulatory program in practice, are subject to periodic Commission examination, and any NASDAQ rule change to increase or decrease the amount of information that a company must publicly disclose would require Commission approval.[69]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the

[49] *Id.*

[50] *See* NYSE Letter.

[51] *Id. See also* Business Wire Letter 4.

[52] *See* NYSE Letter.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *See supra* note 5 and accompanying text noting that NASDAQ's Response Letter responds to only those comments cited in note 4, *supra.*

[59] *See* NASDAQ Response Letter.

[60] *See* Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (SR–NYSE–2011–22) (''NYSE Order'').

[61] *See* NASDAQ Response Letter.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

requirements of Section 6 of the Act.[70] Specifically, as discussed in more detail below, the Commission finds that the proposal is consistent with Sections 6(b)(4),[71] 6(b)(5),[72] and 6(b)(8)[73] in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission notes that while all issuers will receive some services from NASDAQ, such as NASDAQ Online and the Market Intelligence Desk, some issuers will receive additional products and services based on their status as either an Eligible New Listing or Eligible Switch and their market capitalization.[74] NASDAQ has represented that offering additional services only to companies listing on the Global and Global Select Markets and offering different services based on a company's market capitalization reflects the higher demand for these services by larger companies.[75] Moreover, according to NASDAQ, offering such services to newly listed companies should ease the transition of becoming a public company. As to only offering services to transfers from the NYSE to NASDAQ rather than all transfers, NASDAQ notes that this should make up for services that issuers would otherwise forego by switching their listing from NYSE to NASDAQ, and that issuers listed on NYSE are better known and therefore have more value to NASDAQ when they switch to its market.[76]

As noted above, NASDAQ's proposal will provide complimentary products and services to Eligible New Listings and Eligible Switches based on market capitalization. The Commission has previously approved an NYSE proposal providing different tiers of complimentary services to certain NYSE issuers based on shares of common stock issued and outstanding or total global market value based on a public offering price and has found this consistent with Sections 6(b)(4) and Sections 6(b)(5) of the Act.[77] For similar reasons, we also find that it is reasonable for NASDAQ to provide different services to tiers based on market capitalization since larger capitalized companies generally will need and use more services. Further, the Commission believes that by describing in NASDAQ's rules the products and services available to Eligible New Listings and Eligible Switches and the values of the products and services, the Exchange is adding greater transparency to its rules and the fees applicable to issuers.

The Commission recognizes, however, that there are two main differences between the NYSE and NASDAQ proposals. First, the NYSE believes that NASDAQ's treatment of Eligible Switches is not comparable to NYSE Rule 907 since NYSE does not provide different services to an issuer because it is transferring from another exchange; rather, such issuers would be entitled to the same services as issuers currently listed on the NYSE. As noted above, NASDAQ states that it makes this distinction to compensate issuers for services they would forego from switching their listing to NASDAQ from the NYSE, as well as to provide its listing market broader benefits from attracting the larger, better known companies that are listed on NYSE.[78] Specifically, NASDAQ asserts that larger Eligible Switches receive four years of complimentary services because ''having larger companies switch to NASDAQ is more valuable in attracting other potential listings and NOCS' customers than having smaller companies, which are generally not as well known, switch. Finally, these larger companies generally will pay higher listings fees and purchase more NOCS services * * * thereby making their listing more valuable to NASDAQ and NOCS.''[79]

The Commission notes that Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an exchange not unfairly discriminate between issuers. The Commission believes that NASDAQ has provided a sufficient basis for its different treatment of Eligible Switches and that this portion of NASDAQ's proposal meets the requirements of the Act in that it reflects competition between exchanges, with NASDAQ offering discounts for transfers of listings from a competing exchange. In making this determination, we note that the provision of services under the proposal is for a limited duration and that NASDAQ has provided a reasonable basis for deciding to treat NYSE transfers different from other types of transfers. Among other things, NASDAQ has stated that offering services to issuers that must forego similar services provided by the NYSE if they switch their listing to NASDAQ, and that add greater future value to NASDAQ through their listing than do other issuers justify such differential treatment.

Second, the NASDAQ proposal also differs from the NYSE proposal in that NASDAQ will provide services through an affiliated service provider. The Commission notes, however, that under NYSE's approved proposal, issuers are offered services only from certain third party vendors selected by the NYSE. We note that NASDAQ's use of its affiliate to provide services to date does not appear to have adversely affected the nature of competition among suppliers in the market for these services.[80]

The NASDAQ Response Letter responded to issues relating to competition in markets served by Corporate Services. Specifically, NASDAQ reiterated that issuers are not required to use the offered services as a condition of listing. Furthermore, to the extent an issuer chooses to use the services, such services are provided only for a very limited time—between two to four years. Further, it has been NASDAQ's experience that some companies choose not to use its services, even though they are offered free.[81]

[70] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[71] 15 U.S.C. 78f(b)(4).

[72] 15 U.S.C. 78f(b)(5).

[73] 15 U.S.C. 78f(b)(8).

[74] *See* Notice *supra* note 3

[75] *See* Notice *supra* note 3 and NASDAQ Response Letter *supra* note 5.

[76] *See* NASDAQ Response Letter *supra* note 5 and NASDAQ Email. Specifically, NASDAQ states that ''when companies switch to NASDAQ, it helps in our efforts to attract other new listings *&*&* and to retain companies' listings. This benefit is more pronounced when the company switches from the NYSE because NYSE-listed companies tend to be larger and better known than companies listed on NYSE Amex, NYSE Arca or regional exchanges. Having these companies as clients is also valuable to NASDAQ OMX Corporate Solutions (NOCS), which benefits from having well-known companies use its products.'' NASDAQ Email; *see also* NYSE Order *supra* note 60.

[77] *See* NYSE Order *supra* note 60.

[78] *See supra* note 76.

[79] *See* NASDAQ Email.

[80] One commenter noted that NASDAQ has been engaged, on an ongoing basis, in the practice of offering free services to issuers in connection with a listing on NASDAQ. *See* Business Wire Letter 3 and *infra* note 87 and accompanying text. The Commission notes that any such offer of free or discounted services in connection with an initial or continued exchange listing requires the filing by the exchange of an appropriate proposed rule change with the Commission, and approval or effectiveness thereof, before such offer of services can be made, and that a failure to do so would constitute a violation of Section 19(b) of the Act and Rule 19b–4 thereunder.

[81] *See* NASDAQ Response Letter *supra* note 5.

The Commission recognizes, however, that the proposed rule change may affect the purchase decisions of some listed issuers. The effect of offering Corporate Solutions' services on a complimentary basis is to provide issuers with the services of Corporate Solutions at a price that is lower in relative terms than what other vendors charge. As the Commission has previously discussed, a reduction in a vendor's relative price will generally cause some issuers to substitute their business toward that vendor.[82] Accordingly, the Commission believes that NASDAQ's offering of Corporate Solutions' products and services on a complimentary basis will, by lowering its relative price, likely cause some listed issuers to substitute their business away from other vendors and toward Corporate Solutions. The Commission believes, however, that the impact of this substitution would be limited for the reasons discussed below.

As asserted in the Notice, the number of companies eligible for the free services will be small in comparison to the total number of companies that comprise the target market for such services, so that we anticipate there is not likely to be competitively meaningful foreclosure of similar services offered by third parties.[83] NASDAQ represents that only 34 companies in 2009, 77 companies in 2010, and 62 companies through June 30, 2011 would have qualified for free services as Eligible New Listings by virtue of listing in connection with an IPO or a spin-off or a carve out from another company had the proposed rule been in effect.[84] Additionally, NASDAQ states that only 10 companies in 2009, three companies in 2010 and no companies through June 30, 2011 would have qualified for free services as Eligible Switches had the proposal been in place. According to NASDAQ, this represents no more than approximately 3 percent of listed companies.[85]

Further, NASDAQ notes that there are multiple third party services vendors and that those vendors appear to operate in highly competitive markets. In addition, one commenter believed that approving NASDAQ's proposal was necessary to preserve competition.[86] Further, another commenter—a competing services firm—stated that despite ''NASDAQ's current practice of offering 'free' or significantly discounted services[,]'' its business continues to grow and to compete for business from NASDAQ issuers based on the quality of its services.[87]

The Commission also believes that NASDAQ is responding to competitive pressures in the market for listings in making this proposal.[88] Specifically, NASDAQ is offering complimentary products and services to attract new listings. The Commission understands that NASDAQ faces competition in the market for listing services, and that it competes in part by providing complimentary services to its listed companies through its affiliate versus third party vendors like NYSE. The ability to select from a choice of vendors and the use of a specific affiliate vendor are among the different ways that NASDAQ and NYSE may compete for listings and provide services for listed companies. In fact, NASDAQ notes that, by relying on services provided by an affiliate company rather than third parties, NASDAQ gains greater control to assure it can provide the services most valued by companies in a high quality manner.[89] Accordingly, the Commission believes that NASDAQ's proposal reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) in furtherance of the purposes of the Act.[90]

With respect to concerns raised by commenters that NASDAQ's offering of IR services creates a conflict of interest with respect to its role as an SRO, NASDAQ has represented that it has effectively separated its regulatory functions from its business functions. The Commission notes that its oversight of NASDAQ as a registered national securities exchange is designed, among other things, to assure NASDAQ performs its regulatory functions in a manner consistent with the Act. Finally, the Commission notes that any change to NASDAQ's rules to increase or decrease the amount of information that a company must publicly disclose, or the manner of doing so, would require Commission approval.

The Commission has carefully considered the comment letters. Although some of the alternative proposals by the Investor Advisory Group might also satisfy the standards under Sections 6(b) and 19(b) of the Act[91] depending on the facts and circumstances, those proposals are not before us, and the Commission believes that NASDAQ's proposal is consistent with these standards and, therefore, should be approved.[92]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[93] that the proposed rule change (SR–NASDAQ–2011–122) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[94]

Kevin M. O'Neill,

Deputy Secretary.

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[82] *See* NYSE Order *supra* note 60.

[83] *See* Notice *supra* note 3.

[84] *Id.* The Commission notes that Business Wire believes these figures are low because IPOs were depressed by the worldwide financial crises.

[85] We note that these numbers may be different had the proposal been in place at that time.

[86] *See* IR Letter.

[87] *See* PR Newswire Letter; *see also supra* note 80.

[88] *See* NYSE Letter (stating ''NASDAQ's proposed rule is not based on concepts of fairness, but on what it needs to induce issuers to transfer to NASDAQ from NYSE'').

[89] *See* NASDAQ Response Letter *supra* note 5.

[90] 15 U.S.C. 78f(b)(8).

[91] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(b).

[92] The Commission notes that Business Wire and PR Newswire raised concerns that NASDAQ would subsequently file a proposed rule change attempting to lock all NASDAQ listed issuers into using Corporate Solutions' services. The Commission notes that prior to any such change being implemented, it would have to be filed with, and approved, by the Commission pursuant to Section 19(b) of the Act.

[93] 15 U.S.C. 78s(b)(2).

[94] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65971; File No. SR–NYSEArca–2011–75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 expand the scope of potential ''Users'' of its co-location services, and to amend its Fee Schedule. The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

November 1, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to the NYSE Arca System pursuant to NYSE Arca Options Rule 6.2A (*see* NYSE Arca Options Rule 6.1A(a)(19)). The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[5] Under the proposed rule change, Users could therefore include OTP Holders, OTP Firms, Sponsored Participants, non-OTP Holder and non-OTP Firm broker dealers and vendors.[6]

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center.[7] ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.[11] The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.[12] The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.[13] In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEArca–2011–75) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 65624 (October 26, 2011), 76 FR 67526 (''Notice'').

[4] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048.

[5] As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67527.

[6] *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

[7] *Id.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, 76 FR at 67527.

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65969; File No. SR–NASDAQ–2011–169]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

December 15, 2011.

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 2, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to amend Chapter VI, Section 5 (Minimum Increments) to: Extend through June 30, 2012, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''); and replace any Penny Pilot issues that have been delisted.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097)

The text of the amended Exchange rule is set forth immediately below. Proposed new language is in italics and proposed deleted language is [bracketed].[4]

* * * * *

Chapter VI

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [December 31, 2011]*June 30, 2012,* if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity [in the previous six months]*for the six month period beginning June 1, 2011, and ending November 30, 2011.* The replacement issues may be added to the pilot on the second trading day following January 1, [2011 and July 1, 2011]*2012.*

(b) No Change.

* * * * *

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 purpose of this filing is to amend Chapter VI, Section 5 to extend the Penny Pilot through June 30, 2012 and replace any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on December 31, 2011, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for six months through June 30, 2012.

Commensurate with the extension of the Penny Pilot through June 30, 2012, the Exchange proposes to replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot, The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2011, and ending November 30, 2011. The replacement issues would be added to the Pilot on the second trading day following January 1, 2012.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Best Bid or Offer (''BBO'') spread, in terms of data and analysis on the number of quotations generated for options included in the report; (2) size of BBO, in terms of an assessment of the quotation spreads for the options included in the report; (3) industry Average Daily Volume (''ADV''), in terms of data reflecting the size and depth of markets; (4) an assessment of the impact of the Pilot Program on the capacity of Phlx's automated systems; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to 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, by extending the Penny Pilot and replacing delisted Penny Pilot issues.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format through June 30, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62617 (July 30, 2010), 75 FR 47670 (August 6, 2010) (SR–NASDAQ–2010–092) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 63396 (November 30, 2010), 75 FR 76064 (December 7, 2010) (SR–NASDAQ–2010–150) (notice of filing and immediate effectiveness extending the Penny Pilot).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

[5] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's web site.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2011–169 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2011–169. This file number should be included on the subject line if email 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 Web site viewing and printing 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 No. SR–NASDAQ–2011–169 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32663 Filed 12–20–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 26, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0216.

Date Filed: November 23, 2011.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: December 14, 2011.

Description: Application of Trans Executive Airlines of Hawaii, Inc. d/b/a Transair d/b/a Interisland Airways (''Transair'') requesting a certificate of public convenience and necessity authorizing Transair to engage in interstate scheduled and charter air transportation of persons, property and mail.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. 2011–32609 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 3, 2011

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0218.

Date Filed: November 30, 2011.

Parties: Members of the International Air Transport Association.

Subject:

Composite Passenger Tariff Coordinating Conference Singapore, 14 October 2011.
Composite Resolution 017i.
(Memo PTC COMP 1652,).
Intended Effective Date: 1 April 2012.

Docket Number: DOT–OST–2011–0219.

Date Filed: November 30, 2011.

Parties: Members of the International Air Transport Association.

Subject

Composite Passenger Tariff Coordinating Conference Singapore, 14 October 2011,
Composite Resolution 011b.
(Memo PTC COMP 1653.)
Intended Effective Date: 1 June 2012.

Docket Number: DOT–OST–2011–0220.

Date Filed: November 30, 2011.
Parties: Members of the International Air Transport Association.
Subject:
Composite Passenger Tariff Coordinating Conference Singapore, 14 October 2011.
Composite Resolutions 012, 017c.
(Memo PTC COMP 1654.)
Intended Effective Date: 1 April 2012.

Docket Number: DOT–OST–2011–0221.
Date Filed: November 30, 2011.
Parties: Members of the International Air Transport Association.
Subject:
Composite Passenger Tariff Coordinating Conference Singapore, 14 October 2011.
Composite Resolutions 010o.
(Memo PTC COMP 1655.)
Composite Passenger Tariff Coordinating Conference Singapore, 14 October 2011 Minutes,
(Memo PTC COMP 1656.)
Intended Effective Date: 30 January 2012.

Docket Number: DOT–OST–2011–0222.
Date Filed: November 30, 2011.
Parties: Members of the International Air Transport Association.
Subject
Mail Vote 695.
TC3 Special Passenger Amending Resolution 010n.
Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macao SAR) and Japan.
(Memo 1440.)
Intended Effective Date: December 15, 2011.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. 2011–32606 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 11–09–C–00–BWI, To Impose and Use PFC Revenue at Baltimore/Washington International Thurgood Marshall Airport, Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Baltimore/Washington International Thurgood Marshall Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 3, 2012.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Isquith, Senior Financial Analysis, Maryland Aviation Administration, at the following address: P.O. Box 8766, BWI Airport, Maryland 21240. Air carriers and foreign air carriers may submit copies of written comments previously provided to Maryland Aviation Administration under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry J. Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166, Telephone: (703) 661–1354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Baltimore/Washington International Thurgood Marshall Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On December 14, 2011, the FAA determined that the application to impose and use PFC submitted by Maryland Aviation Administration was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 19, 2012.

The following is a brief overview of the impose and use application No. 11–09–C–00–BWI:

Proposed charge effective date: March 1, 2018.
Proposed charge expiration date: September 1, 2020.
Level of the proposed PFC: $4.50.
Total estimated PFC revenue: $134,459,000.

Description of Proposed Impose and Use Project

Terminal B/C Connector. This project will construct a 40-foot-wide passenger connector hallway between the secured side of Concourses B and C in order to allow connecting passengers the ability to move freely between Concourse B and C without having to exit the secure side of one concourse and having to be rescreened at a passenger screening checkpoint of the other concourse. The project will also include the widening of Concourse C to provide fire/life safety compliance with required ingress/egress of passengers. In addition, the existing 6-lane passenger security checkpoint for Concourse C will be relocated and expanded to a total of 9 passenger screening lanes to allow for more efficient passenger screening times during peak periods. The existing airline outbound baggage conveyance system will be required to be reconfigured to accommodate the Concourse B/C Connector project along with the relocation/reconfiguration of several airport concessions, Maryland Aviation Administration offices. Other elements include the reconfiguration of several emergency exit stairwells and the construction of a temporary passenger hallway connector between Concourse B and C that will be required during construction. The Concourse C mechanical chiller is being upgraded to accommodate the additional terminal square footage.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not To Be Required to Collect PFCS: Nonscheduled/on demand air carriers, filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Maryland Aviation Administration.

Issued at Dulles, Virginia, on December 14, 2011.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 2011–32559 Filed 12–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35568]

Genesee & Wyoming Inc.—Continuance in Control Exemption–Hilton & Albany Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49

U.S.C. 11323–25 for Genesee & Wyoming Inc. (GWI), a noncarrier, to continue in control of Hilton & Albany Railroad, Inc. (HAL), upon HAL's becoming a Class III rail carrier in a related transaction involving HAL's lease from Norfolk Southern Railway Company (NSR) and operation of a 55.5-mile rail line between Hilton and Albany, Ga.[1] GWI's continuance-in-control exemption is subject to labor protective conditions. GWI is a holding company that directly or indirectly controls one Class II rail carrier and, not including HAL, 58 Class III rail carriers. The NSR line that HAL will lease and operate connects directly with 3 rail lines controlled by GWI: Chattahoochee Bay Railroad (CHAT), Chattahoochee Industrial Railroad, and Georgia Southwestern Railroad, and indirectly with a fourth, the Bay Line Railroad (via CHAT).

DATES: This exemption will be effective on December 30, 2011. Petitions to stay must be filed by December 27, 2011. Petitions to reopen must be filed by December 27, 2011.

ADDRESSES: Send an original and 10 copies of all pleadings referring to Docket No. FD 35568, to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245–0386. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site at *www.stb.dot.gov*.

Decided: December 15, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–32628 Filed 12–20–11; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Hilton & Albany R.R.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35567 (STB served Dec. 2, 2011).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 16, 2011.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 20, 2012, to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Office of the General Counsel

OMB Number: 1505–0204.

Type of Review: Extension of a currently approved collection.

Title: Prohibition on Funding of Unlawful Internet Gambling.

Abstract: The unlawful Internet Gambling Enforcement Act requires the Treasury and the Federal Reserve Board (the ''Agencies'') to prescribe regulations requiring designated payment systems and all participants to identify and block unlawful Internet gambling transactions through the establishment of reasonably designated policies and procedures. The regulation imposes a recordkeeping requirement on regulated entities (i.e., depository institutions, money transmitting business operators such as Western Union, MoneyGram, and PayPal, and card system operators such as Visa and MasterCard) by requiring them to establish and maintain written policies and procedures reasonably designed to prevent or prohibit restricted transactions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 589,520.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–32650 Filed 12–20–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 16, 2011.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 20, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–XXXX.

Type of Review: New Collection.

Title: Form 1125–A, Cost of Goods Sold; Form 1125–E, Compensation of Officers.

Form: 1125–A, 1125–E.

Abstract: Form 1125–A: During a re-design of Form 1120, U.S. Corporation Income Tax Return, related to the inclusion of ''Merchant Card Receipts'', it was deemed to be more efficient to present the data required to report ''Cost of Goods Sold'' on a new form. This new form, 1125–A, will be attached to form 1120, as well as to other forms that require this information.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 44,085,600.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–32598 Filed 12–20–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board Panel for Eligibility, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Panel for Eligibility of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet on Monday, January 23, 2012, from 8 a.m. to 1 p.m. at The Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety, and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral, and clinical science research.

The panel meeting will be open to the public for approximately one-half hour at the start of the meeting to discuss the general status of the program. The remaining portion of the meeting will be closed to the public for the review, discussion, and evaluation of non-clinician credentials and research proposals to be performed for VA. The closed portion of the meeting involves discussion, examination, reference to staff and consultant critiques of non-clinician credentials and research proposals. Closing portions of the panel meeting is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B).

Those who plan to attend or would like to obtain a copy of minutes of the panel meeting and roster of the participants of the panel should contact LeRoy G. Frey, Ph.D., Chief, Program Review (10P9B), VA, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5674.

Dated: December 15, 2011.

By Direction of the Secretary

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–32560 Filed 12–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on January 23–24, 2012, at Department of Veterans Affairs Regional Office, 245 West Houston Street, Manhattan, New York, from 9 a.m. to 4 p.m.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Sarah Fusina, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420, or email at *Sarah.Fusina@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Fusina at (202) 461–9569.

Dated: December 15, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–32576 Filed 12–20–11; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 76 Wednesday,
No. 245 December 21, 2011

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1030
Truth in Savings (Regulation DD); Interim Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1030

[Docket No. CFPB–2011–0032]

RIN 3170–AA06

Truth in Savings (Regulation DD)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Board of Governors of the Federal Reserve System's (Board's) rulemaking authority for the Truth in Savings Act (TISA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation DD (Truth in Savings). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation DD, previously published by the Board.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0032* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Krista Ayoub or Stephen Shin, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.,* based on findings that economic stability would be enhanced, competition between depository institutions would be improved, and consumers' ability to make informed decisions regarding deposit accounts would be strengthened if there was uniformity in the disclosure of interest rates and fees. The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms. Historically, TISA has been implemented in Regulation DD of the Board of Governors of the Federal Reserve System (Board), 12 CFR part 230, and, with respect to credit unions, by regulations of the National Credit Union Administration (NCUA), 12 CFR part 707. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended a number of consumer financial protection laws, including TISA. In addition to various substantive amendments, the Dodd-Frank Act transferred the Board's rulemaking authority for TISA to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.[2] *See* sections 1061 and 1100B of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and TISA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation DD (Truth in Savings), 12 CFR Part 1030, implementing TISA.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the Board's Regulation DD as the Bureau's new Regulation DD, 12 CFR part 1030, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, the Bureau is preserving where possible past numbering systems by republishing regulations with Bureau part numbers that correspond to regulations in existence prior to the transfer of rulemaking authority. For example, while this interim final rule generally incorporates the Board's existing regulatory text, appendices (including model forms and clauses), and supplements, as amended,[3] the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities.

B. Specific Changes

In addition to the changes described above, the Bureau is making certain nomenclature and other non-substantive changes for clarity and consistency. For example, references to the Board and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references and addresses for filing applications and notices. In addition, edits to subheadings and numbering have been made for consistency and to fix typographical errors. Footnotes have been moved to the text of the regulation or commentary, as appropriate.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under TISA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other federal agencies. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] Dodd-Frank section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. Further, Dodd-Frank section 1100B did not grant the Bureau TISA rulemaking authority over credit unions or repeal the NCUA's TISA rulemaking authority over credit unions under 12 U.S.C. 4311.

[3] *See* 76 FR 42020 (July 18, 2011).

orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[4] TISA is a federal consumer financial law.[5] Accordingly, effective July 21, 2011, the authority of the Board to issue regulations pursuant to TISA transferred to the Bureau.[6]

The TISA, as amended, authorizes the Bureau to issue regulations to carry out the provisions of TISA.[7] These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purpose of TISA, facilitate compliance with TISA, or prevent circumvention or evasion of TISA.[8]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)[9] generally requires public notice and an opportunity to comment before promulgation of regulations.[10] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[11] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of TISA authority from the Board to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the Board's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, replacing appropriate nomenclature to reflect the transfer of authority to the Bureau, and changing the address for filing applications and notices. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the Board's regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with TISA and its implementing regulation, and the new regulations will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[12]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[13] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulation DD to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with TISA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

Although not required by the interim final rule, depository institutions may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation DD. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These

[4] Public Law 111–203, section 1061(a)(1). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted ''all powers and duties'' vested in each of the federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011). *See also* footnote 2, *supra.*

[5] Public Law 111–203, section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); id. section 1002(12) (defining ''enumerated consumer laws'' to include TISA).

[6] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

[7] *Id.* Section 1100B(1); 12 U.S.C. 4302–4304, 4308.

[8] *Id.*

[9] 5 U.S.C. 551 *et seq.*

[10] 5 U.S.C. 553(b), (c).

[11] 5 U.S.C. 553(b)(3)(A), (B).

[12] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[13] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the creditor's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulation DD, as well as regulations implementing thirteen other existing consumer financial laws,[14] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[15] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[16] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[17] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[18]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[19] and the panel requirement applies only when a rulemaking requires an IRFA.[20] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation DD. The rule imposes no new, substantive obligations on depository institutions. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0004.

List of Subjects in 12 CFR Part 1030

Advertising, Banks, Banking, Consumer protection, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in savings.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds Part 1030 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1030—TRUTH IN SAVINGS (REGULATION DD)

Sec.

1030.1 Authority, purpose, coverage, and effect on state laws.
1030.2 Definitions.
1030.3 General disclosure requirements.
1030.4 Account disclosures.
1030.5 Subsequent disclosures.
1030.6 Periodic statement disclosures.
1030.7 Payment of interest.
1030.8 Advertising.
1030.9 Enforcement and record retention.
1030.10 [Reserved]
1030.11 Additional disclosure requirements for overdraft services.
Appendix A to Part 1030—Annual Percentage Yield Calculation
Appendix B to Part 1030—Model Clauses and Sample Forms
Appendix C to Part 1030—Effect on State Laws
Appendix D to Part 1030—Issuance of Official Interpretations
Supplement I to Part 1030—Official Interpretations

Authority: 12 U.S.C. 4302–4304, 4308, 5512, 5581.

§ 1030.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This part, known as Regulation DD, is issued by the Bureau of Consumer Financial Protection to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3201 *et seq.,* Public Law 102–242, 105 Stat. 2236), as amended by Title X, section 1100B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376). Information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44

[14] The fourteen laws implemented by this and its companion rulemakings are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[15] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[16] 5 U.S.C. 601 *et seq.*

[17] 5 U.S.C. 603, 604.

[18] 5 U.S.C. 609.

[19] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[20] 5 U.S.C. 609(b).

U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0004.

(b) *Purpose.* The purpose of this part is to enable consumers to make informed decisions about accounts at depository institutions. This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions.

(c) *Coverage.* This part applies to depository institutions except for credit unions. In addition, the advertising rules in § 1030.8 of this part apply to any person who advertises an account offered by a depository institution, including deposit brokers.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. Additional information on inconsistent state laws and the procedures for requesting a preemption determination from the Bureau are set forth in appendix C of this part.

§ 1030.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Account* means a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts. For purposes of the advertising requirements in § 1030.8 of this part, the term also includes an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer.

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly:

(1) The availability or terms of, or a deposit in, a new account; and

(2) For purposes of §§ 1030.8(a) and 1030.11 of this part, the terms of, or a deposit in, a new or existing account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period and calculated according to the rules in appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) *Bureau* means the Bureau of Consumer Financial Protection.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance. The term does not include interest, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(g) *Business day* means a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(h) *Consumer* means a natural person who holds an account primarily for personal, family, or household purposes, or to whom such an account is offered. The term does not include a natural person who holds an account for another in a professional capacity.

(i) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(j) *Depository institution* and *institution* mean an institution defined in section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461), except credit unions defined in section 19(b)(1)(A)(iv).

(k) *Deposit broker* means any person who is a deposit broker as defined in section 29(g) of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)).

(l) *Fixed-rate account* means an account for which the institution contracts to give at least 30 calendar days advance written notice of decreases in the interest rate.

(m) *Grace period* means a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

(n) *Interest* means any payment to a consumer or to an account for the use of funds in an account, calculated by application of a periodic rate to the balance. The term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(o) *Interest rate* means the annual rate of interest paid on an account which does not reflect compounding. For the purposes of the account disclosures in § 1030.4(b)(1)(i) of this part, the interest rate may, but need not, be referred to as the ''annual percentage rate'' in addition to being referred to as the ''interest rate.''

(p) *Passbook savings account* means a savings account in which the consumer retains a book or other document in which the institution records transactions on the account.

(q) *Periodic statement* means a statement setting forth information about an account (other than a time account or passbook savings account) that is provided to a consumer on a regular basis four or more times a year.

(r) *State* means a state, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Stepped-rate account* means an account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.

(t) *Tiered-rate account* means an account that has two or more interest rates that are applicable to specified balance levels.

(u) *Time account* means an account with a maturity of at least seven days in which the consumer generally does not have a right to make withdrawals for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on amounts withdrawn.

(v) *Variable-rate account* means an account in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases.

§ 1030.3 General disclosure requirements.

(a) *Form.* Depository institutions shall make the disclosures required by §§ 1030.4 through 1030.6 of this part, as applicable, clearly and conspicuously, in writing, and in a form the consumer may keep. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 1030.4(a)(2) and 1030.8 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E–Sign Act in the circumstances set forth in those sections. Disclosures for each account offered by an institution may be presented separately or combined with disclosures for the institution's other accounts, as long as it is clear which disclosures are applicable to the consumer's account.

(b) *General.* The disclosures shall reflect the terms of the legal obligation of the account agreement between the consumer and the depository institution. Disclosures may be made in languages other than English, provided

the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR Part 1005).* Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and its implementing Regulation E (12 CFR Part 1005) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple consumers.* If an account is held by more than one consumer, disclosures may be made to any one of the consumers.

(e) *Oral response to inquiries.* In an oral response to a consumer's inquiry about interest rates payable on its accounts, the depository institution shall state the annual percentage yield. The interest rate may be stated in addition to the annual percentage yield. No other rate may be stated.

(f) *Rounding and accuracy rules for rates and yields.* (1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the interest rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the interest rate may be expressed to more than two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in Appendix A of this part.

§ 1030.4 Account disclosures.

(a) *Delivery of account disclosures.* (1) *Account opening.* (i) *General.* A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. Except as provided in paragraph (a)(1)(ii) of this section, if the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) *Timing of electronic disclosures.* If a consumer who is not present at the institution uses electronic means (for example, an Internet Web site) to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before the account is opened or the service is provided.

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If a consumer who is not present at the institution makes a request, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form, or electronically if the consumer agrees.

(ii) In providing disclosures upon request, the institution may:

(A) Specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number consumers may call to obtain current rate information.

(B) State the maturity of a time account as a term rather than a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information.* (i) *Annual percentage yield and interest rate.* The ''annual percentage yield'' and the ''interest rate,'' using those terms, and for fixed-rate accounts the period of time the interest rate will be in effect.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the interest rate and annual percentage yield may change;

(B) How the interest rate is determined;

(C) The frequency with which the interest rate may change; and

(D) Any limitation on the amount the interest rate may change.

(2) *Compounding and crediting.* (i) *Frequency.* The frequency with which interest is compounded and credited.

(ii) *Effect of closing an account.* If consumers will forfeit interest if they close the account before accrued interest is credited, a statement that interest will not be paid in such cases.

(3) *Balance information.* (i) *Minimum balance requirements.* (A) Any minimum balance required to:

(*1*) Open the account;

(*2*) Avoid the imposition of a fee; or

(*3*) Obtain the annual percentage yield disclosed.

(B) Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the balance computation method specified in § 1030.7 of this part used to calculate interest on the account.

(iii) *When interest begins to accrue.* A statement of when interest begins to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of interest prior to maturity.* If compounding occurs during the term and interest may be withdrawn prior to maturity, a statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings. For accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually, and that disclose an APY determined in accordance with section E of Appendix A of this part, a statement that interest cannot remain on deposit and that payout of interest is mandatory.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(c) *Notice to existing account holders.* (1) *Notice of availability of disclosures.* Depository institutions shall provide a notice to consumers who receive periodic statements and who hold existing accounts of the type offered by the institution on June 21, 1993. The notice shall be included on or with the first periodic statement sent on or after June 21, 1993 (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that consumers may request account disclosures containing terms, fees, and rate information for their account. In responding to such a request, institutions shall provide

disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, institutions may provide account disclosures to consumers. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) is sent.

§ 1030.5 Subsequent disclosures.

(a) *Change in terms.* (1) *Advance notice required.* A depository institution shall give advance notice to affected consumers of any change in a term required to be disclosed under § 1030.4(b) of this part if the change may reduce the annual percentage yield or adversely affect the consumer. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the interest rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Check printing fees.* Changes in fees assessed for check printing.

(iii) *Short-term time accounts.* Changes in any term for time accounts with maturities of one month or less.

(b) *Notice before maturity for time accounts longer than one month that renew automatically.* For time accounts with a maturity longer than one month that renew automatically at maturity, institutions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the institution shall provide account disclosures set forth in § 1030.4(b) of this part for the new account, along with the date the existing account matures. If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number consumers may call to obtain the interest rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the institution shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the consumer:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The interest rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the consumer may call to obtain the interest rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 1030.4(b) of this part for the existing account.

(c) *Notice before maturity for time accounts longer than one year that do not renew automatically.* For time accounts with a maturity longer than one year that do not renew automatically at maturity, institutions shall disclose to consumers the maturity date and whether interest will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

§ 1030.6 Periodic statement disclosures.

(a) *General rule.* If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The ''annual percentage yield earned'' during the statement period, using that term, calculated according to the rules in Appendix A of this part.

(2) *Amount of interest.* The dollar amount of interest earned during the statement period.

(3) *Fees imposed.* Fees required to be disclosed under § 1030.4(b)(4) of this part that were debited to the account during the statement period. The fees shall be itemized by type and dollar amounts. Except as provided in § 1030.11(a)(1) of this part, when fees of the same type are imposed more than once in a statement period, a depository institution may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

(5) *Aggregate fee disclosure.* If applicable, the total overdraft and returned item fees required to be disclosed by § 1030.11(a).

(b) *Special rule for average daily balance method.* In making the disclosures described in paragraph (a) of this section, institutions that use the average daily balance method and that calculate interest for a period other than the statement period shall calculate and disclose the annual percentage yield earned and amount of interest earned based on that period rather than the statement period. The information in paragraph (a)(4) of this section shall be stated for that period as well as for the statement period.

§ 1030.7 Payment of interest.

(a) *Permissible methods.* (1) *Balance on which interest is calculated.* Institutions shall calculate interest on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method. Institutions shall calculate interest by use of a daily rate of at least 1/365 of the interest rate. In a leap year a daily rate of 1/366 of the interest rate may be used.

(2) *Determination of minimum balance to earn interest.* An institution shall use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated. An institution may use an additional method that is unequivocally beneficial to the consumer.

(b) *Compounding and crediting policies.* This section does not require institutions to compound or credit interest at any particular frequency.

(c) *Date interest begins to accrue.* Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005 *et seq.*) and the Board of Governors of the Federal Reserve System's implementing Regulation CC (12 CFR part 229). Interest shall accrue until the day funds are withdrawn.

§ 1030.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not:

(1) Be misleading or inaccurate or misrepresent a depository institution's deposit contract; or

(2) Refer to or describe an account as ''free'' or ''no cost'' (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word ''profit'' shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an ''annual percentage yield'' using that term. (The abbreviation ''APY'' may be used provided the term ''annual percentage yield'' is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the ''interest rate,'' using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (e) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* The period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date.

(3) *Minimum balance.* The minimum balance required to obtain the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.

(5) *Effect of fees.* A statement that fees could reduce the earnings on the account.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties:* A statement that a penalty will or may be imposed for early withdrawal.

(iii) *Required interest payouts.* For noncompounding time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually, and that disclose an APY determined in accordance with section E of Appendix A of this part, a statement that interest cannot remain on deposit and that payout of interest is mandatory.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The ''annual percentage yield,'' using that term;

(2) The time requirement to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements.* (1) *Certain media.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4), and (d)(5) of this section:

(i) Broadcast or electronic media, such as television or radio;

(ii) Outdoor media, such as billboards; or

(iii) Telephone response machines.

(2) *Indoor signs.* (i) Signs inside the premises of a depository institution (or the premises of a deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a sign exempt by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an ''annual percentage yield,'' using that term or the term ''APY.'' The sign shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

(f) *Additional disclosures in connection with the payment of overdrafts.* Institutions that promote the payment of overdrafts in an advertisement shall include in the advertisement the disclosures required by § 1030.11(b) of this part.

§ 1030.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of the act (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of the act and this part. Compliance is enforced by the agencies listed in that section.

(b) [Reserved]

(c) *Record retention.* A depository institution shall retain evidence of compliance with this part for a minimum of two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing this part may require depository institutions under their jurisdiction to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 270 of the act.

§ 1030.10 [Reserved]

§ 1030.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements.* (1) *General.* A depository institution must separately disclose on each periodic statement, as applicable:

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term ''Total Overdraft Fees;'' and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required.* The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date;

(3) *Format requirements.* The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 1030.6(a)(3), using a format substantially similar to Sample Form B–10 in Appendix B to this part.

(b) *Advertising disclosures for overdraft services.* (1) *Disclosures.* Except as provided in paragraphs (b)(2) through (4) of this section, any advertisement promoting the payment of overdrafts shall disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the consumer must repay or cover any overdraft; and

(iv) The circumstances under which the institution will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures.* Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the institution's payment of overdrafts will be agreed upon in writing and subject to Regulation Z (12 CFR Part 1026);

(ii) A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in

response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a consumer;

(vii) Disclosures required by federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a deposit account agreement discussing the institution's right to pay overdrafts;

(x) A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service; or

(xii) An opt-out or opt-in notice regarding the institution's payment of overdrafts or provision of discretionary overdraft services.

(3) *Exception for ATM screens and telephone response machines.* The disclosures described in paragraphs (b)(1)(ii) and (iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs.* Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by § 1030.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

(c) *Disclosure of account balances.* If an institution discloses balance information to a consumer through an automated system, the balance may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account, whether under a service provided in its discretion, a service subject to Regulation Z (12 CFR part 1026), or a service to transfer funds from another account of the consumer. The institution may, at its option, disclose additional account balances that include such additional amounts, if the institution prominently state s that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

Appendix A to Part 1030—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate and the frequency of compounding. The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. Institutions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year. Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for periodic statements.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 1030.4 and 1030.5 and for advertising under § 1030.8 is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates, and to certain time accounts with a stated maturity greater than one year.

A. General Rules

Except as provided in Part I.E. of this appendix, the annual percentage yield shall be calculated by the formula shown below. Institutions shall calculate the annual percentage yield based on the actual number of days in the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits or withdrawals) occur during the term. This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement. For time accounts that are offered in multiples of months, institutions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If institutions choose to use the latter rule, they must use the same number of days to calculate the dollar amount of interest earned on the account that is used in the annual percentage yield formula (where ''Interest'' is divided by ''Principal'').

The annual percentage yield is calculated by use of the following general formula (''APY'' is used for convenience in the formulas):

$$APY = 100\ [(1 + Interest/Principal)(365/Days\ in\ term) - 1]$$

''Principal'' is the amount of funds assumed to have been deposited at the beginning of the account.

''Interest'' is the total dollar amount of interest earned on the Principal for the term of the account.

''Days in term'' is the actual number of days in the term of the account. When the ''days in term'' is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the annual percentage yield can be calculated by use of the following simple formula:

$$APY=100\ (Interest/Principal)$$

Examples

(1) If an institution pays $61.68 in interest for a 365-day year on $1,000 deposited into a NOW account, using the general formula above, the annual percentage yield is 6.17%:

$$APY = 100\ [(1 + 61.68/1{,}000)\ (365/365) - 1]$$
$$APY = 6.17\%$$

Or, using the simple formula above (since, as an account without a stated term, the term is deemed to be 365 days):

$$APY = 100\ (61.68/1{,}000)$$
$$APY = 6.17\%$$

(2) If an institution pays $30.37 in interest on a $1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days), using the general formula above, the annual percentage yield is 6.18%:

$$APY = 100\ [(1 + 30.37/1{,}000)\ (365/182) - 1]$$
$$APY = 6.18\%$$

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more interest rates applied in succeeding periods (where the rates are known at the time the account is opened), an institution shall assume each interest rate is in effect for the length of time provided for in the deposit contract.

Examples

(1) If an institution offers a $1,000 6-month certificate of deposit on which it pays a 5% interest rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% interest rate, compounded daily, for the next three months (which contain 92 days), the total interest for six months is $26.68 and, using the general formula above, the annual percentage yield is 5.39%:

$$APY = 100\ [(1 + 26.68/1{,}000)\ (365/183) - 1]$$
$$APY = 5.39\%$$

(2) If an institution offers a $1,000 two-year certificate of deposit on which it pays a 6% interest rate, compounded daily, for the first year, and a 6.5% interest rate, compounded daily, for the next year, the total interest for two years is $133.13, and, using the general formula above, the annual percentage yield is 6.45%:

APY = 100 [(1 + 133.13/1,000) (365/730) − 1]
APY = 6.45%

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, an institution must base the calculation only on the initial interest rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium (or discount) rate must be calculated like a stepped-rate account. Thus, an institution shall assume that: (1) The introductory interest rate is in effect for the length of time provided for in the deposit contract; and (2) the variable interest rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing consumers holding the same account (who are not receiving the introductory interest rate) must be used for the remainder of the year.

For example, if an institution offers an account on which it pays a 7% interest rate, compounded daily, for the first three months (which, for example, contain 91 days), while the variable interest rate that would have been in effect when the account was opened was 5%, the total interest for a 365-day year for a $1,000 deposit is $56.52 (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the annual percentage yield is 5.65%:

APY = 100 (56.52/1,000)
APY = 5.65%

D. Tiered-Rate Accounts (Different Rates Apply to Specified Balance Levels)

For accounts in which two or more interest rates paid on the account are applicable to specified balance levels, the institution must calculate the annual percentage yield in accordance with the method described below that it uses to calculate interest. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500 but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A. Under this method, an institution pays on the full balance in the account the stated interest rate that corresponds to the applicable deposit tier. For example, if a consumer deposits $8,000, the institution pays the 5.50% interest rate on the entire $8,000.

When this method is used to determine interest, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the interest rates and deposit balances assumed above, the institution will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single interest rate. Thus, the calculation is based on the total amount of interest that would be received by the consumer for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of interest.

First tier. Assuming daily compounding, the institution will pay $53.90 in interest on a $1,000 deposit. Using the general formula, for the first tier, the annual percentage yield is 5.39%:

APY = 100 [(1 + 53.90/1,000) (365/365) − 1]
APY = 5.39%

Using the simple formula:

APY = 100 (53.90/1,000)
APY = 5.39%

Second tier. The institution will pay $452.29 in interest on an $8,000 deposit. Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

APY = 100 (452.29/8,000)
APY = 5.65%

Third tier. The institution will pay $1,183.61 in interest on a $20,000 deposit. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

APY = 100 (1,183.61/20,000)
APY = 5.92%

Tiering Method B. Under this method, an institution pays the stated interest rate only on that portion of the balance within the specified tier. For example, if a consumer deposits $8,000, the institution pays 5.25% on $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cut-off of $2,500).

The institution that computes interest in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield range is calculated based on the total amount of interest earned for a year assuming the minimum principal required to earn the interest rate for that tier. The high figure for an annual percentage yield range is based on the amount of interest the institution would pay on the highest principal that could be deposited to earn that same interest rate. If the account does not have a limit on the maximum amount that can be deposited, the institution may assume any amount.

For the tiering structure assumed above, the institution would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the institution would pay $53.90 in interest on a $1,000 deposit. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

APY = 100 (53.90/1,000)
APY = 5.39%

Second tier. For the second tier, the institution would pay between $134.75 and $841.45 in interest, based on assumed balances of $2,500.01 and $15,000, respectively. For $2,500.01, interest would be figured on $2,500 at 5.25% interest rate plus interest on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%, using the simple formula:

APY = 100 (134.75/2,500)
APY = 5.39%

For $15,000, interest is figured on $2,500 at 5.25% interest rate plus interest on $12,500 at 5.50% interest rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

APY = 100 (841.45/15,000)
APY = 5.61%

Thus, the annual percentage yield range for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the institution would pay $841.45 in interest on the low end of the third tier (a balance of $15,000.01). For $15,000.01, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $.01 at 5.75% interest rate. For the low end of the third tier, therefore, the annual percentage yield (using the simple formula) is 5.61%:

APY = 100 (841.45/15,000)
APY = 5.61%

Since the institution does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of $100,000, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $85,000 at 5.75% interest rate. For the high end of the

third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%.

APY = 100 (5,871.79/100,000)
APY = 5.87%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.87%.

If the assumed maximum balance amount is $1,000,000 instead of $100,000, the institution would use $985,000 rather than $85,000 in the last calculation. In that case, for the high end of the third tier the annual percentage yield, using the simple formula, is 5.91%:

APY = 100 (59,134.22/1,000,000)
APY = 5.91%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

E. Time Accounts With a Stated Maturity Greater Than One Year That Pay Interest at Least Annually

1. For time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, and that require the consumer to withdraw interest at least annually, the annual percentage yield may be disclosed as equal to the interest rate.

Example

(1) If an institution offers a $1,000 two-year certificate of deposit that does not compound and that pays out interest semi-annually by check or transfer at a 6.00% interest rate, the annual percentage yield may be disclosed as 6.00%.

(2) For time accounts covered by this paragraph that are also stepped-rate accounts, the annual percentage yield may be disclosed as equal to the composite interest rate.

Example

(1) If an institution offers a $1,000 three-year certificate of deposit that does not compound and that pays out interest annually by check or transfer at a 5.00% interest rate for the first year, 6.00% interest rate for the second year, and 7.00% interest rate for the third year, the institution may compute the composite interest rate and APY as follows:

(a) Multiply each interest rate by the number of days it will be in effect;

(b) Add these figures together; and

(c) Divide by the total number of days in the term.

(2) Applied to the example, the products of the interest rates and days the rates are in effect are (5.00% × 365 days) 1825, (6.00% × 365 days) 2190, and (7.00% × 365 days) 2555, respectively. The sum of these products, 6570, is divided by 1095, the total number of days in the term. The composite interest rate and APY are both 6.00%.

Part II. Annual Percentage Yield Earned for Periodic Statements

The annual percentage yield earned for periodic statements under § 1030.6(a) is an annualized rate that reflects the relationship between the amount of interest actually earned on the consumer's account during the statement period and the average daily balance in the account for the statement period. Pursuant to § 1030.6(b), however, if an institution uses the average daily balance method and calculates interest for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of interest earned and the average daily balance in the account for that other period.

The annual percentage yield earned shall be calculated by using the following formulas (''APY Earned'' is used for convenience in the formulas):

A. General Formula

APY Earned = 100 [(1 + Interest earned/Balance) (365/Days in period) − 1]

''Balance'' is the average daily balance in the account for the period.

''Interest earned'' is the actual amount of interest earned on the account for the period.

''Days in period'' is the actual number of days for the period.

Examples

(1) Assume an institution calculates interest for the statement period (and uses either the daily balance or the average daily balance method), and the account has a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period. The average daily balance for the period is $1,000. The interest earned (under either balance computation method) is $5.25 during the period. The annual percentage yield earned (using the formula above) is 6.58%:

APY Earned = 100 [(1 + 5.25/1,000) (365/30) − 1]
APY Earned = 6.58%

(2) Assume an institution calculates interest on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of $2,000 September 1 through September 15 and a balance of $1,000 for the remaining 15 days of September. The average daily balance for the month of September is $1,500, which results in $6.50 in interest earned for the month. The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 5.40%:

APY Earned = 100 [(6.50/1,500) (365/30) − 1]
APY Earned = 5.40%

(3) Assume an institution calculates interest on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in interest earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

APY Earned = 100 [(1 + 21/2,000) (365/91) − 1]
APY Earned = 4.28%

B. Special Formula for Use Where Periodic Statement Is Sent More Often Than the Period for Which Interest Is Compounded

Institutions that use the daily balance method to accrue interest and that issue periodic statements more often than the period for which interest is compounded shall use the following special formula:

$$APY\ Earned = 100\left\{\left[1+\frac{(Interest\ earned/Balance)}{Days\ in\ period}(Compounding)\right]^{(365/Compounding)}-1\right\}$$

The following definition applies for use in this formula (all other terms are defined under Part II):

''Compounding'' is the number of days in each compounding period.

Assume an institution calculates interest for the statement period using the daily balance method, pays a 5.00% interest rate, compounded annually, and provides periodic statements for each monthly cycle. The account has a daily balance of $1,000 for a 30-day statement period. The interest earned is $4.11 for the period, and the annual percentage yield earned (using the special formula above) is 5.00%:

$$APY\ Earned = 100\left\{\left[1+\frac{(4.11/1{,}000)}{30}(365)\right]^{(365/365)}-1\right\}$$

APY Earned = 5.00%

Appendix B to Part 1030—Model Clauses and Sample Forms

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B–1—Model Clauses for Account Disclosures

(a) Rate Information

(i) Fixed-Rate Accounts

The interest rate on your account is __% with an annual percentage yield of __%. You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

(ii) Variable-Rate Accounts

The interest rate on your account is __% with an annual percentage yield of __%.

Your interest rate and annual percentage yield may change.

Determination of Rate

The interest rate on your account is based on (name of index) [plus/minus a margin of __]; or

At our discretion, we may change the interest rate on your account.

Frequency of Rate Changes

We may change the interest rate on your account [every (time period)/at any time].

Limitations on Rate Changes

The interest rate for your account will never change by more than __% each (time period).

The interest rate will never be [less/more] than __%; or

The interest rate will never [exceed__% above/drop more than __% below] the interest rate initially disclosed to you.

(iii) Stepped-Rate Accounts

The initial interest rate for your account is __%. You will be paid this rate [for (time period)/until (date)]. After that time, the interest rate for your account will be __%, and you will be paid this rate [for (time period)/until (date)]. The annual percentage yield for your account is __%.

(iv) Tiered-Rate Accounts

Tiering Method A

- If your [daily balance/average daily balance] is $__ or more, the interest rate paid on the entire balance in your account will be __% with an annual percentage yield of __%.
- If your [daily balance/average daily balance] is more than $__, but less than $__, the interest rate paid on the entire balance in your account will be __% with an annual percentage yield of __%.
- If your [daily balance/average daily balance] is $__ or less, the interest rate paid on the entire balance will be __% with an annual percentage yield of __%.

Tiering Method B

- An interest rate of __% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $__. The annual percentage yield for this tier will range from __% to __%, depending on the balance in the account.
- An interest rate of ____% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $____. The annual percentage yield for this tier will range from ____% to ____%, depending on the balance in the account.
- If your [daily balance/average daily balance] is $____ or less, the interest rate paid on the entire balance will be ____% with an annual percentage yield of ____%.

(b) Compounding and Crediting

(i) Frequency

Interest will be compounded [on a ____ basis/every (time period)]. Interest will be credited to your account [on a ____ basis/every (time period)].

(ii) Effect of Closing an Account

If you close your account before interest is credited, you will not receive the accrued interest.

(c) Minimum Balance Requirements

(i) To Open the Account

You must deposit $____ to open this account.

(ii) To Avoid Imposition of Fees

A minimum balance fee of $____ will be imposed every (time period) if the balance in the account falls below $____ any day of the (time period).

A minimum balance fee of $____ will be imposed every (time period) if the average daily balance for the (time period) falls below $____. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(iii) To Obtain the Annual Percentage Yield Disclosed

You must maintain a minimum balance of $____ in the account each day to obtain the disclosed annual percentage yield.

You must maintain a minimum average daily balance of $____ to obtain the disclosed annual percentage yield. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(d) Balance Computation Method

(i) Daily Balance Method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

(ii) Average Daily Balance Method

We use the average daily balance method to calculate interest on your account. This method applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Accrual of Interest on Noncash Deposits

Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks); or

Interest begins to accrue on the business day you deposit noncash items (for example, checks).

(f) Fees

The following fees may be assessed against your account:

____$____
____$____
____$____
____(*conditions for imposing fee*) $____
____% of ____.

(g) Transaction Limitations

The minimum amount you may [withdraw/write a check for] is $____.

You may make ____ [deposits into/withdrawals from] your account each (time period).

You may not make [deposits into/withdrawals from] your account until the maturity date.

(h) Disclosures Relating to Time Accounts

(i) Time Requirements

Your account will mature on (date).

Your account will mature in (time period).

(ii) Early Withdrawal Penalties

We [will/may] impose a penalty if you withdraw [any/all] of the [deposited funds/principal] before the maturity date. The fee imposed will equal ____ days/week[s]/month[s] of interest; or

We [will/may] impose a penalty of $____ if you withdraw [any/all] of the [deposited funds/principal] before the maturity date.

If you withdraw some of your funds before maturity, the interest rate for the remaining funds in your account will be ____% with an annual percentage yield of ____%.

(iii) Withdrawal of Interest Prior to Maturity

The annual percentage yield assumes interest will remain on deposit until maturity. A withdrawal will reduce earnings.

(iv) Renewal Policies

(1) Automatically Renewable Time Accounts

This account will automatically renew at maturity.

You will have [____ calendar/business] days after the maturity date to withdraw funds without penalty; or

There is no grace period following the maturity of this account to withdraw funds without penalty.

(2) Non-Automatically Renewable Time Accounts

This account will not renew automatically at maturity. If you do not renew the account,

your deposit will be placed in [an interest-bearing/a noninterest-bearing] account.

(v) Required Interest Distribution

This account requires the distribution of interest and does not allow interest to remain in the account.

(i) Bonuses

You will [be paid/receive] [$_____ (description of item)] as a bonus [when you open the account/on (date) ____].s

You must maintain a minimum [daily balance/average daily balance] of $____ to obtain the bonus.

To earn the bonus, [$____/your entire principal] must remain on deposit [for (time period)/until (date)____].

B–2—Model Clauses for Change in Terms

On (date), the cost of (type of fee) will increase to $____.

On (date), the interest rate on your account will decrease to ____% with an annual percentage yield of ____%.

On (date), the minimum [daily balance/average daily balance] required to avoid imposition of a fee will increase to $____.

B–3—Model Clauses for Pre-Maturity Notices for Time Accounts

(a) Automatically Renewable Time Accounts With Maturities of One Year or Less But Longer Than One Month

Your account will mature on (date).

If the account renews, the new maturity date will be (date).

The interest rate for the renewed account will be ____% with an annual percentage yield of ____%; or

The interest rate and annual percentage yield have not yet been determined. They will be available on (date). Please call (phone number) to learn the interest rate and annual percentage yield for your new account.

(b) Non-Automatically Renewable Time Accounts With Maturities Longer Than One Year

Your account will mature on (date).

If you do not renew the account, interest [will/will not] be paid after maturity.

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B-4 – SAMPLE FORM (MULTIPLE ACCOUNTS)

BANK ABC

DISCLOSURE OF ACCOUNT TERMS

This disclosure contains information about your:

X NOW Account

- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate on your account daily. The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

___ Passbook Savings Account

- The interest rate on your account will be paid for at least 30 days.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Additional disclosures for your account are included on the attached sheets.

__ Money Market Account

- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate on your account daily. The interest rate on your account will never be less than 3.00%.
- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

___ Certificates of Deposit

- The interest rate for your account will be paid until the maturity date of your certificate (_____).
- Interest is compounded daily and will be credited to your account monthly.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- This account will automatically renew at maturity. You will have ten (10) calendar days from the maturity date to withdraw your funds without being charged a penalty.
- After the account is opened, you may not make deposits into or withdrawals from this account until the maturity date.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.
- If any of the deposit is withdrawn before the maturity date, a penalty as shown below will be imposed:

Term	Early Withdrawal Penalty
3-month CD	30 days interest
6-month CD	90 days interest
1-year CD	120 days interest
2-year CD	180 days interest

Additional disclosures for your account are included on the attached sheets.

(Fee Schedule Insert)

BANK ABC
FEE SCHEDULE

NOW Account

- Monthly minimum balance fee if the daily balance drops below $ 500 any day of the month . . . . . $ 7.50

Passbook Savings Account

- Monthly minimum balance fee if the daily balance drops below $ 100 any day of the month . . . . . $ 6.00
- You may make three (3) withdrawals per quarter Each subsequent withdrawal . . . . . $ 2.00

Money Market Account

- Monthly minimum balance fee if the daily balance drops below $ 1,000 any day of the month . . . . . $ 5.00

Other Account Fees

- Deposited checks returned . . . . . $ 5.00
- Balance inquiries (at a branch or at an ATM) . . . . . $ 1.00
- Check printing ♦ . . . . . (Fee depends on style of check ordered)
- Your check returned for insufficient funds (per check) ♦ . . . . . $ 16.00
- Stop payment request (per request) ♦ . . . . . $ 12.50
- Certified check (per check) ♦ . . . . . $ 10.00

♦ Fee does not apply to Passbook Savings Accounts or Certificates of Deposit.

Additional disclosures for your account are included on the attached sheet.

(Rate Sheet Insert)

BANK ABC
RATE SHEET

ACCOUNT TYPE	MINIMUM DEPOSIT TO OPEN ACCOUNT	MINIMUM BALANCE* TO OBTAIN ANNUAL PERCENTAGE YIELD	INTEREST RATE	ANNUAL PERCENTAGE YIELD
NOW	$ 500	$ 2,500	4.00%	4.08%
PASSBOOK SAVINGS	$ 100	$ 500	3.50%	3.56%
MONEY MARKET	$ 1,000	$ 1,000	4.15%	4.24%
3-MONTH CD	$ 1,000	$ 1,000	4.20%	4.29%
6-MONTH CD	$ 1,000	$ 1,000	4.25%	4.34%
1-YEAR CD	$ 1,000	$ 1,000	5.20%	5.34%
2-YEAR CD	$ 1,000	$ 1,000	5.80%	5.97%

*** Daily balance (the amount of principal in the account each day)**

B-5 – SAMPLE FORM (NOW ACCOUNT)

BANK XYZ

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

NOW ACCOUNT

Fee schedule

- **Monthly minimum balance fee if the daily balance drops below $1,000 any day of the month . . . . . $ 7.00**
- **Fee to stop payment of a check . . . . . $ 12.50**
- **Fee for check returns (insufficient funds – per check) . . . . . $ 16.00**
- **Certified check (per check) . . . . . $ 10.00**
- **Fee for initial check printing (per 200) . . . . . $ 12.00**
  (Cost for check printing varies depending on the style of checks ordered.)

Rate information

- The interest rate for your account is 4.00 % with an annual percentage yield of 4.08 %. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2% each year.

Minimum balance requirements

- You must deposit $500 to open this account.
- You must maintain a minimum balance of $2,500 in the account each day to obtain the annual percentage yield listed above.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Compounding and crediting

- Interest for your account will be compounded daily and credited to your account on the last day of each month.

Accrual of interest on deposits other than cash

- Interest begins to accrue on the business day you deposit noncash items (for example, checks).

B-6 -- SAMPLE FORM (TIERED-RATE MONEY MARKET ACCOUNT)

BANK ABC

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

MONEY MARKET ACCOUNT

Fee schedule

- Check returned for insufficient funds (per check) $16.00
- Stop payment request (per request) $12.50
- Certified check (per check) $10.00
- Check printing . . . . . (Fee depends on style of checks ordered)

Rate information

- If your daily balance is $15,000 or more, the interest rate paid on the entire balance in your account will be 5.75 % with an annual percentage yield of 5.92 %.
- If your daily balance is more than $2,500, but less than $15,000, the interest rate paid on the entire balance in your account will be 5.50 % with an annual percentage yield of 5.65 %.
- If your daily balance is $2,500 or less, the interest rate paid on the entire balance will be 5.25 % with an annual percentage yield of 5.39 %.
- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.

Minimum balance requirements

- You must deposit $1,000 to open this account.
- A minimum balance fee of $5.00 will be imposed every month if the balance in your account falls below $1,000 any day of the month.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.

B-7 -- SAMPLE FORM (CERTIFICATE OF DEPOSIT)

XYZ SAVINGS BANK
1 YEAR CERTIFICATE OF DEPOSIT

Rate information

The interest rate for your account is 5.20 % with an annual percentage yield of 5.34 %. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on September 30, 1993. The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal will reduce earnings.

Interest for your account will be compounded daily and credited to your account on the last day of each month.

Interest begins to accrue on the business day you deposit any noncash item (for example, checks).

Minimum balance requirements

You must deposit $1,000 to open this account.

You must maintain a minimum balance of $1,000 in your account every day to obtain the annual percentage yield listed above.

Balance computation method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date.

Early withdrawal penalty

If you withdraw any principal before the maturity date, a penalty equal to three months interest will be charged to your account.

Renewal policy

This account will be automatically renewed at maturity. You have a grace period of ten (10) calendar days after the maturity date to withdraw the funds without being charged a penalty.

B-8 -- SAMPLE FORM (CERTIFICATE OF DEPOSIT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE CD RATES!!

CERTIFICATES OF DEPOSIT	ANNUAL PERCENTAGE YIELD (APY)
5 YEAR	6.31%
4 YEAR	6.07%
3 YEAR	5.72%
2 YEAR	5.52%
1 YEAR	4.54%
6 MONTH	4.34%
90 DAY	4.21%
	APYs are offered on accounts opened from 5/9/93 through 5/18/93.

The minimum balance to open an account and obtain the APY is $1,000.
A penalty may be imposed for early withdrawal.

For more information call:

202-123-1234

B-9 -- SAMPLE FORM (MONEY MARKET ACCOUNT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE RATES!!

MONEY MARKET ACCOUNTS	ANNUAL PERCENTAGE YIELD (APY)
Accounts with a balance of $5,000 or less	5.07%*
Accounts with a balance over $5,000	5.57%*
APYs are accurate as of April 30, 1993	*The rates may change after the account is opened.

Fees could reduce the earnings on the account.

For more information call:

202-123-1234

B-10 Aggregate Overdraft and Returned Item Fees Sample Form

	Total For This Period	Total Year-to-Date
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	$0.00	$30.00

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Appendix C to Part 1030—Effect on State Laws

(a) Inconsistent Requirements

State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

(b) Preemption Determinations

A depository institution, state, or other interested party may request the Bureau to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. Notice that the Bureau intends to make a determination (either on request or on its own motion) will be published in the **Federal Register**, with an opportunity for public comment unless the Bureau finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision. Notice of a final determination will be published in the **Federal Register** and furnished to the party who made the request and to the appropriate state official.

(c) Effect of Preemption Determinations

After the Bureau determines that a state law is inconsistent, a depository institution may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

(d) Reversal of Determination

The Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law. Notice of reversal of a determination will be published in the **Federal Register** and a copy furnished to the appropriate state official.

Appendix D to Part 1030—Issuance of Official Interpretations

Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically. No interpretations will be issued approving depository institutions' forms, statements, or calculation tools or methods.

Supplement I to Part 1030—Official Interpretations

Introduction

1. *Official status.* This commentary is the means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation DD.

Section 1030.1 Authority, purpose, coverage, and effect on state laws

(c) Coverage

1. *Foreign applicability.* Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents (including resident aliens) of any state as defined in § 1030.2(r). Accounts held in an institution located in a state are covered, even if funds are transferred periodically to a location outside the United States. Accounts held in an institution located outside the United States are not covered, even if held by a U.S. resident.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement offering consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is to be held by the broker or directly by the consumer.

Section 1030.2—Definitions

(a) Account.

1. *Covered accounts.* Examples of accounts subject to the regulation are:

i. Interest-bearing and noninterest-bearing accounts.

ii. Deposit accounts opened as a condition of obtaining a credit card.

iii. Accounts denominated in a foreign currency.

iv. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts.

v. Payable on death (POD) or ''Totten trust'' accounts.

2. *Other accounts.* Examples of accounts not subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums.

ii. Accounts established to make periodic disbursements on construction loans.

iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a ''Totten trust,'' or an IRA and SEP account).

iv. Accounts opened by an executor in the name of a decedent's estate.

3. *Other investments.* The term ''account'' does not apply to all products of a depository institution. Examples of products not covered are:

i. Government securities.

ii. Mutual funds.

iii. Annuities.

iv. Securities or obligations of a depository institution.

v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances.

(b) Advertisement.

1. *Covered messages.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to prospective customers the availability of consumer accounts—such as:

i. Telephone solicitations.

ii. Messages on automated teller machine (ATM) screens.

iii. Messages on a computer screen in an institution's lobby (including any printout) other than a screen viewed solely by the institution's employee.

iv. Messages in a newspaper, magazine, or promotional flyer or on radio.

v. Messages that are provided along with information about the consumer's existing account and that promote another account at the institution.

2. *Other messages.* Examples of messages that are not advertisements are:

i. Rate sheets in a newspaper, periodical, or trade journal (unless the depository institution, or a deposit broker offering accounts at the institution, pays a fee for or otherwise controls publication).

ii. In-person discussions with consumers about the terms for a specific account.

iii. For purposes of § 1030.8(b) of this part through § 1030.8(e) of this part, information given to consumers about existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal.

iv. Information about a particular transaction in an existing account.

v. Disclosures required by federal or other applicable law.

vi. A deposit account agreement.

(f) Bonus.

1. *Examples.* Bonuses include items of value, other than interest, offered as incentives to consumers, such as an offer to pay the final installment deposit for a holiday club account. Items that are not a bonus include discount coupons for goods or services at restaurants or stores.

2. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Institutions may rely on the valuation standard used by the Internal Revenue Service to determine if the value of the item is *de minimis.* Examples of items of *de minimis* value are:

i. Disability insurance premiums valued at an amount of $10 or less per year.

ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less.

3. *Aggregation.* In determining if an item valued at $10 or less is a bonus, institutions must aggregate per account per calendar year items that may be given to consumers. In making this determination, institutions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume an institution offers in January to give consumers an item valued at $7 for each calendar quarter during the year that the average account balance in a negotiable order of withdrawal (NOW) account exceeds $10,000. The bonus rules are triggered, since consumers are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to consumers opening a NOW account during the month of January, even though in November the institution introduces a new promotion that includes, for example, an offer to existing NOW account holders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

4. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not

include value that consumers receive through the waiver or reduction of fees (even if the fees waived exceed $10) for banking-related services such as the following:

i. A safe deposit box rental fee for consumers who open a new account.

ii. Fees for travelers checks for account holders.

iii. Discounts on interest rates charged for loans at the institution.

(h) Consumer.

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are attorney-client trust accounts and landlord-tenant security accounts.

2. *Other accounts.* Accounts not held in a professional capacity include accounts held by an individual for a child under the Uniform Gifts to Minors Act.

3. *Sole proprietors.* Accounts held by individuals as sole proprietors are not covered.

4. *Retirement plans.* IRAs and SEP accounts are consumer accounts to the extent that funds are invested in covered accounts. Keogh accounts are not subject to the regulation.

(j) Depository institution and institution.

1. *Foreign institutions.* Branches of foreign institutions located in the United States are subject to the regulation if they offer deposit accounts to consumers. Edge Act and Agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of this part.

(k) Deposit broker.

1. *General.* A deposit broker is a person who is in the business of placing or facilitating the placement of deposits in an institution, as defined by the Federal Deposit Insurance Act (12 U.S.C. 29(g)).

(n) Interest.

1. *Relation to bonuses.* Bonuses are not interest for purposes of this part.

(p) Passbook savings account.

1. *Relation to Regulation E.* Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR 1005.2(j)), such as an account that receives direct deposit of social security payments. Accounts permitting access by other electronic means are not ''passbook saving accounts'' and must comply with the requirements of § 1030.6 if statements are sent four or more times a year.

(q) Periodic statement.

1. *Examples.* Periodic statements do not include:

i. Additional statements provided solely upon request.

ii. General service information such as a quarterly newsletter or other correspondence describing available services and products.

(t) Tiered-rate account.

1. *Time accounts.* Time accounts paying different rates based solely on the amount of the initial deposit are not tiered-rate accounts.

2. *Minimum balance requirements.* A requirement to maintain a minimum balance to earn interest does not make an account a tiered-rate account.

(u) Time account.

1. *Club accounts.* Although club accounts typically have a maturity date, they are not time accounts unless they also require a penalty of at least seven days' interest for withdrawals during the first six days after the account is opened.

2. *Relation to Regulation D.* Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204) permits in limited circumstances the withdrawal of funds without penalty during the first six days after a ''time deposit'' is opened. (See 12 CFR 204.2(c)(1)(i).) But the fact that a consumer makes a withdrawal as permitted by Regulation D does not disqualify the account from being a time account for purposes of this part.

(v) Variable-rate account.

1. *General.* A certificate of deposit permitting one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account.

Section 1030.3—General Disclosure Requirements

(a) Form.

1. *Design requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order.

ii. In combination with other disclosures or account terms.

iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account.

iv. On more than one page and on the front and reverse sides.

v. By using inserts to a document or filling in blanks.

vi. On more than one document, as long as the documents are provided at the same time.

2. *Consistent terminology.* Institutions must use consistent terminology to describe terms or features required to be disclosed. For example, if an institution describes a monthly fee (regardless of account activity) as a ''monthly service fee'' in account-opening disclosures, the periodic statement and change-in-term notices must use the same terminology so that consumers can readily identify the fee.

(b) General.

1. *Specificity of legal obligation.* Institutions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a ''month.''

(c) Relation to Regulation E.

1. *General rule.* Compliance with Regulation E (12 CFR Part 1005) is deemed to satisfy the disclosure requirements of this part, such as when:

i. An institution changes a term that triggers a notice under Regulation E, and uses the timing and disclosure rules of Regulation E for sending change-in-term notices.

ii. Consumers add an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees (see 12 CFR 1005.7.)

iii. An institution complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as for balance inquiry fees at ATMs) required to be disclosed by this part but not by Regulation E.

iv. An institution relies on Regulation E's rules regarding disclosure of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitations on ''intra-institutional transfers'' to or from the consumer's other accounts during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(e) Oral response to inquiries.

1. *Application of rule.* Institutions are not required to provide rate information orally.

2. *Relation to advertising.* The advertising rules do not cover an oral response to a question about rates.

3. *Existing accounts.* This paragraph does not apply to oral responses about rate information for existing accounts. For example, if a consumer holding a one-year certificate of deposit (CD) requests interest rate information about the CD during the term, the institution need not disclose the annual percentage yield.

(f) Rounding and accuracy rules for rates and yields

(f)(1) Rounding.

1. *Permissible rounding.* Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and disclosed as 5.64%; 5.645% rounded up and disclosed as 5.65%.

(f)(2) Accuracy.

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Institutions may not purposely incorporate the tolerance into their calculation of yields.

Section 1030.4—Account Disclosures

(a) Delivery of account disclosures.

(a)(1) Account opening.

1. *New accounts.* New account disclosures must be provided when:

i. A time account that does not automatically rollover is renewed by a consumer.

ii. A consumer changes a term for a renewable time account (see comment 5(b)–5 regarding disclosure alternatives.)

iii. An institution transfers funds from an account to open a new account not at the consumer's request, unless the institution previously gave account disclosures and any change-in-term notices for the new account.

iv. An institution accepts a deposit from a consumer to an account that the institution had deemed closed for the purpose of treating accrued but uncredited interest as forfeited interest (see comment 7(b)–3.)

2. *Acquired accounts.* New account disclosures need not be given when an institution acquires an account through an acquisition of or merger with another institution (but see § 1030.5(a) of this part regarding advance notice requirements if terms are changed).

(a)(2) Requests.

Paragraph (a)(2)(i).

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person)

about rates and yields or fees does not trigger the duty to provide account disclosures. But when consumers ask for written information about an account (whether by telephone, in person, or by other means), the institution must provide disclosures unless the account is no longer offered to the public.

2. *General requests.* When responding to a consumer's general request for disclosures about a type of account (a NOW account, for example), an institution that offers several variations may provide disclosures for any one of them.

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that consumers do not make in person, including requests made by electronic means (such as by electronic mail).

4. *Use of electronic means.* If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, email, or via the institution's Web site, the institution may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an email address that the consumer provides for that purpose, or on the institution's Web site, without regard to the consumer consent or other provisions of the E–Sign Act. The regulation does not require an institution to provide, nor a consumer to agree to receive, the disclosures required by § 1030.4(a)(2) in electronic form.

Paragraph (a)(2)(ii)(A).

1. *Recent rates.* Institutions comply with this paragraph if they disclose an interest rate and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

Paragraph (a)(2)(ii)(B).

1. *Term.* Describing the maturity of a time account as ''1 year'' or ''6 months,'' for example, illustrates a statement of the maturity of a time account as a term rather than a date (''January 10, 1995'').

(b) Content of account disclosures.

(b)(1) Rate information.

(b)(1)(i) Annual percentage yield and interest rate.

1. *Rate disclosures.* In addition to the interest rate and annual percentage yield, institutions may disclose a periodic rate corresponding to the interest rate. No other rate or yield (such as ''tax effective yield'') is permitted. If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* For fixed-rate time accounts paying the opening rate until maturity, institutions may disclose the period of time the interest rate will be in effect by stating the maturity date. (See Appendix B, B–7—Sample Form.) For other fixed-rate accounts, institutions may use a date (''This rate will be in effect through May 4, 1995'') or a period (''This rate will be in effect for at least 30 days'').

3. *Tiered-rate accounts.* Each interest rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The interest rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

(b)(1)(ii) Variable rates.

Paragraph (b)(1)(ii)(B).

1. *Determining interest rates.* To disclose how the interest rate is determined, institutions must:

i. Identify the index and specific margin, if the interest rate is tied to an index.

ii. State that rate changes are within the institution's discretion, if the institution does not tie changes to an index.

Paragraph (b)(1)(ii)(C).

1. *Frequency of rate changes.* An institution reserving the right to change rates at its discretion must state the fact that rates may change at any time.

Paragraph (b)(1)(ii)(D).

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Institutions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and crediting.

(b)(2)(ii) Effect of closing an account.

1. *Deeming an account closed.* An institution may, subject to state or other law, provide in its deposit contracts the actions by consumers that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited interest. An example is the withdrawal of all funds from the account prior to the date that interest is credited.

(b)(3) Balance information.

(b)(3)(ii) Balance computation method.

1. *Methods and periods.* Institutions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (the daily balance for a calendar month, for example) and accruing interest (the average daily balance for a statement period, for example). Each method and corresponding period must be disclosed.

(b)(3)(iii) When interest begins to accrue.

1. *Additional information.* Institutions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as ''ledger'' or ''collected'' balances to disclose when interest begins to accrue.

(b)(4) Fees.

1. *Covered fees.* The following are types of fees that must be disclosed:

i. Maintenance fees, such as monthly service fees.

ii. Fees to open or to close an account.

iii. Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs.

iv. Fees for special services, such as stop-payment fees, fees for balance inquiries or verification of deposits, fees associated with checks returned unpaid, and fees for regularly sending to consumers checks that otherwise would be held by the institution.

2. *Other fees.* Institutions need not disclose fees such as the following:

i. Fees for services offered to account and nonaccount holders alike, such as travelers checks and wire transfers (even if different amounts are charged to account and nonaccount holders).

ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying.

3. *Amount of fees.* Institutions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee (such as ''$4.00 monthly service fee'') will typically satisfy these requirements.

4. *Tied-accounts.* Institutions must state if fees that may be assessed against an account are tied to other accounts at the institution. For example, if an institution ties the fees payable on a NOW account to balances held in the NOW account and a savings account, the NOW account disclosures must state that fact and explain how the fee is determined.

5. *Fees for overdrawing an account.* Under § 1030.4(b)(4) of this part, institutions must disclose the conditions under which a fee may be imposed. In satisfying this requirement institutions must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for an institution to state that the fee applies to overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means,'' as applicable. Disclosing a fee ''for overdraft items'' would not be sufficient.

(b)(5) Transaction limitations.

1. *General rule.* Examples of limitations on the number or dollar amount of deposits or withdrawals that institutions must disclose are:

i. Limits on the number of checks that may be written on an account within a given time period.

ii. Limits on withdrawals or deposits during the term of a time account.

iii. Limitations required by Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204) on the number of withdrawals permitted from money market deposit accounts by check to third parties each month. Institutions need not disclose reservations of right to require notices for withdrawals from accounts required by federal or state law.

(b)(6) Features of time accounts.

(b)(6)(i) Time requirements.

1. *''Callable'' time accounts.* In addition to the maturity date, an institution must state the date or the circumstances under which it may redeem a time account at the institution's option (a ''callable'' time account).

(b)(6)(ii) Early withdrawal penalties.

1. *General.* The term ''penalty'' may but need not be used to describe the loss of interest that consumers may incur for early withdrawal of funds from time accounts.

2. *Examples.* Examples of early withdrawal penalties are:

i. Monetary penalties, such as ''$10.00'' or ''seven days' interest plus accrued but uncredited interest.''

ii. Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit.

iii. Reclamation of bonuses.

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties for purposes of this part.

4. *Disclosing penalties.* Penalties may be stated in months, whether institutions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating ''one month's interest'' is permissible, whether the institution assesses 30 days' interest during the month of April, or selects a time period between 28 and 31 days for calculating the interest for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal policies.

1. *Rollover time accounts.* Institutions offering a grace period on time accounts that automatically renew need not state whether interest will be paid if the funds are withdrawn during the grace period.

2. *Nonrollover time accounts.* Institutions paying interest on funds following the maturity of time accounts that do not renew automatically need not state the rate (or annual percentage yield) that may be paid. (See Appendix B, Model Clause B–1(h)(iv)(2).)

Section 1030.5—Subsequent Disclosures

(a) Change in terms.

(a)(1) Advance notice required.

1. *Form of notice.* Institutions may provide a change-in-term notice on or with a periodic statement or in another mailing. If an institution provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, institutions may note that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term.

2. *Effective date.* An example of language for disclosing the effective date of a change is ''As of November 21, 1994.''

3. *Terms that change upon the occurrence of an event.* An institution offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the institution fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that consumer's account at that time).

4. *Examples.* Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for consumers for whom account maintenance or activity fees were waived during their employment by the depository institution.

ii. The expiration of one year in a promotion described in the account opening disclosures to ''waive $4.00 monthly service charges for one year.''

(a)(2) No notice required.

(a)(2)(ii) Check printing fees.

1. *Increase in fees.* A notice is not required for an increase in fees for printing checks (or deposit and withdrawal slips) even if the institution adds some amount to the price charged by the vendor.

(b) Notice before maturity for time accounts longer than one month that renew automatically.

1. *Maturity dates on nonbusiness days.* In determining the term of a time account, institutions may disregard the fact that the term will be extended beyond the disclosed number of days because the disclosed maturity falls on a nonbusiness day. For example, a holiday or weekend may cause a ''one-year'' time account to extend beyond 365 days (or 366, in a leap year) or a ''one-month'' time account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as ''October 28.''

ii. A date that is easily determinable, such as ''the Tuesday before the maturity date stated on this notice'' or ''as of the maturity date stated on this notice.''

3. *Alternative timing rule.* Under the alternative timing rule, an institution offering a 10-day grace period would have to provide the disclosures at least 10 days prior to the scheduled maturity date.

4. *Club accounts.* If consumers have agreed to the transfer of payments from another account to a club time account for the next club period, the institution must comply with the requirements for automatically renewable time accounts—even though consumers may withdraw funds from the club account at the end of the current club period.

5. *Renewal of a time account.* In the case of a change in terms that becomes effective if a rollover time account is subsequently renewed:

i. If the change is initiated by the institution, the disclosure requirements of this paragraph apply. (Paragraph 1030.5(a) applies if the change becomes effective prior to the maturity of the existing time account.)

ii. If the change is initiated by the consumer, the account opening disclosure requirements of § 1030.4(b) apply. (If the notice required by this paragraph has been provided, institutions may give new account disclosures or disclosures highlighting only the new term.)

6. *Example.* If a consumer receives a prematurity notice on a one-year time account and requests a rollover to a six-month account, the institution must provide either account opening disclosures including the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of longer than one year.

1. *Highlighting changed terms.* Institutions need not highlight terms that changed since the last account disclosures were provided.

(c) Notice before maturity for time accounts longer than one year that do not renew automatically.

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover time account, institutions need not provide account disclosures unless a new account is established.

Section 1030.6—Periodic Statement Disclosures

(a) General rule.

1. *General.* Institutions are not required to provide periodic statements. If they do provide statements, disclosures need only be furnished to the extent applicable. For example, if no interest is earned for a statement period, institutions need not state that fact. Or, institutions may disclose ''$0'' interest earned and ''0%'' annual percentage yield earned.

2. *Regulation E interim statements.* When an institution provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states interest or rate information. (See 12 CFR 1005.9(b).)

3. *Combined statements.* Institutions may provide information about an account (such as a MMDA) on the periodic statement for another account (such as a NOW account) without triggering the disclosures required by this section, as long as:

i. The information is limited to the account number, the type of account, or balance information, and

ii. The institution also provides a periodic statement complying with this section for each account.

4. *Other information.* Additional information that may be given on or with a periodic statement includes:

i. Interest rates and corresponding periodic rates applied to balances during the statement period.

ii. The dollar amount of interest earned year-to-date.

iii. Bonuses paid (or any *de minimis* consideration of $10 or less).

iv. Fees for products such as safe deposit boxes.

(a)(1) Annual percentage yield earned.

1. *Ledger and collected balances.* Institutions that accrue interest using the collected balance method may use either the ledger or the collected balance in determining the annual percentage yield earned.

(a)(2) Amount of interest.

1. *Accrued interest.* Institutions must state the amount of interest that accrued during the statement period, even if it was not credited.

2. *Terminology.* In disclosing interest earned for the period, institutions must use the term ''interest'' or terminology such as:

i. ''Interest paid,'' to describe interest that has been credited.

ii. ''Interest accrued'' or ''interest earned,'' to indicate that interest is not yet credited.

3. *Closed accounts.* If consumers close an account between crediting periods and forfeits accrued interest, the institution may not show any figures for interest earned or annual percentage yield earned for the period (other than zero, at the institution's option).

(a)(3) Fees imposed.

1. *General.* Periodic statements must state fees disclosed under § 1030.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. (See § 1030.11(a)(1) of this part regarding certain fees that are required to be grouped.) When fees of the same type are grouped together, the description must make clear that the dollar figure represents more than a single fee, for example, ''total fees for checks written this period.'' Examples of fees that may not be grouped together are—

i. Monthly maintenance and excess-activity fees.

ii. ''Transfer'' fees, if different dollar amounts are imposed, such as $.50 for deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers and fees for other services, such as balance-inquiry or maintenance fees.

iv. Fees for paying overdrafts and fees for returning checks or other items unpaid.

3. *Identifying fees.* Statement details must enable consumers to identify the specific fee. For example:

i. Institutions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

ii. Institutions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(a)(4) Length of period.

1. *General.* Institutions providing the beginning and ending dates of the period must make clear whether both dates are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, institutions must calculate the annual percentage yield earned based on account balances for each day the account was open.

(b) Special rule for average daily balance method.

1. *Monthly statements and quarterly compounding.* This rule applies, for example, when an institution calculates interest on a quarterly average daily balance and sends monthly statements. In this case, the first two monthly statements would omit annual percentage yield earned and interest earned figures; the third monthly statement would reflect the interest earned and the annual percentage yield earned for the entire quarter.

2. *Length of the period.* Institutions must disclose the length of both the interest calculation period and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that ''the interest earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30.''

3. *Quarterly statements and monthly compounding.* Institutions that use the average daily balance method to calculate interest on a monthly basis and that send statements on a quarterly basis may disclose a single interest (and annual percentage yield earned) figure. Alternatively, an institution may disclose three interest and three annual percentage yield earned figures, one for each month in the quarter, as long as the institution states the number of days (or beginning and ending dates) in the interest period if different from the statement period.

Section 1030.7—Payment of Interest

(a)(1) Permissible methods.

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay interest on the full amount of principal in the account each day include:

i. Paying interest on the balance in the account at the end of the period (the ''ending balance'' method).

ii. Paying interest for the period based on the lowest balance in the account for any day in that period (the ''low balance'' method).

iii. Paying interest on a percentage of the balance, excluding the amount set aside for reserve requirements (the ''investable balance'' method).

2. *Use of 365-day basis.* Institutions may apply a daily periodic rate greater than 1/365 of the interest rate—such as 1/360 of the interest rate—as long as it is applied 365 days a year.

3. *Periodic interest payments.* An institution can pay interest each day on the account and still make uniform interest payments. For example, for a one-year certificate of deposit an institution could make monthly interest payments equal to 1/12 of the amount of interest that will be earned for a 365-day period (or 11 uniform monthly payments—each equal to roughly 1/12 of the total amount of interest—and one payment that accounts for the remainder of the total amount of interest earned for the period).

4. *Leap year.* Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29.

5. *Maturity of time accounts.* Institutions are not required to pay interest after time accounts mature. (See 12 CFR Part 217, Regulation Q of the Board of Governors of the Federal Reserve System, for limitations on duration of interest payments.) Examples include:

i. During a grace period offered for an automatically renewable time account, if consumers decide during that period not to renew the account.

ii. Following the maturity of nonrollover time accounts.

iii. When the maturity date falls on a holiday, and consumers must wait until the next business day to obtain the funds.

6. *Dormant accounts.* Institutions must pay interest on funds in an account, even if inactivity or the infrequency of transactions would permit the institution to consider the account to be ''inactive'' or ''dormant'' (or similar status) as defined by state or other law or the account contract.

(a)(2) Determination of minimum balance to earn interest.

1. *Daily balance accounts.* Institutions that require a minimum balance may choose not to pay interest for days when the balance drops below the required minimum, if they use the daily balance method to calculate interest.

2. *Average daily balance accounts.* Institutions that require a minimum balance may choose not to pay interest for the period in which the balance drops below the required minimum, if they use the average daily balance method to calculate interest.

3. *Beneficial method.* Institutions may not require that consumers maintain both a minimum daily balance and a minimum average daily balance to earn interest, such as by requiring consumers to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But an institution could offer a minimum balance to earn interest that includes an additional method that is ''unequivocally beneficial'' to consumers such as the following: An institution using the daily balance method to calculate interest and requiring a $500 minimum daily balance could offer to pay interest on the account for those days the minimum balance is not met as long as consumers maintain an average daily balance throughout the month of $400.

4. *Paying on full balance.* Institutions must pay interest on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn interest, and a consumer deposits $500, the institution must pay the stated interest rate on the full $500 and not just on $200.

5. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine:

i. The daily or average daily balance on which interest will be paid.

ii. Whether any minimum balance to earn interest is met.

6. *Club accounts.* Institutions offering club accounts (such as a ''holiday'' or ''vacation'' club) cannot impose a minimum balance requirement for interest based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the institution cannot set a $500 ''minimum balance'' and then pay interest only if the consumer has made all 50 payments.

7. *Minimum balances not affecting interest.* Institutions may use the daily balance, average daily balance, or any other computation method to calculate minimum balance requirements not involving the payment of interest—such as to compute minimum balances for assessing fees.

(b) Compounding and crediting policies.

1. *General.* Institutions choosing to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If consumers withdraw funds (without closing the account) prior to a scheduled crediting date, institutions may delay paying the accrued interest on the withdrawn amount until the scheduled crediting date, but may not avoid paying interest.

3. *Closed accounts.* Subject to state or other law, an institution may choose not to pay accrued interest if consumers close an account prior to the date accrued interest is credited, as long as the institution has disclosed that fact.

(c) Date interest begins to accrue.

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of interest accrual, or when interest need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Institutions may calculate interest by using a ''ledger'' or ''collected'' balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal of principal.* Institutions must accrue interest on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the institution must accrue interest on those funds through Monday.

Section 1030.8—Advertising

(a) Misleading or inaccurate advertisements.

1. *General.* All advertisements are subject to the rule against misleading or inaccurate advertisements, even though the disclosures applicable to various media differ.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate when:

i. For a tiered-rate account, it also provides the lower dollar amount of the tier corresponding to the advertised annual percentage yield.

ii. For a time account, it also provides the term required to obtain the advertised annual percentage yield.

3. *Fees affecting ''free'' accounts.* For purposes of determining whether an account can be advertised as ''free'' or ''no cost,'' maintenance and activity fees include:

i. Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions.

ii. Transaction and service fees that consumers reasonably expect to be imposed on a regular basis.

iii. A flat fee, such as a monthly service fee.

iv. Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check or in person).

4. *Other fees.* Examples of fees that are not maintenance or activity fees include:

i. Fees not required to be disclosed under § 1030.4(b)(4).

ii. Check printing fees.

iii. Balance inquiry fees.

iv. Stop-payment fees and fees associated with checks returned unpaid.

v. Fees assessed against a dormant account.

vi. Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account.

5. *Similar terms.* An advertisement may not use the term ''fees waived'' if a maintenance or activity fee may be imposed because it is similar to the terms ''free'' or ''no cost.''

6. *Specific account services.* Institutions may advertise a specific account service or feature as free if no fee is imposed for that service or feature. For example, institutions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead consumers by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. *Free for limited time.* If an account (or a specific account service) is free only for a limited period of time—for example, for one year following the account opening—the account (or service) may be advertised as free if the time period is also stated.

8. *Conditions not related to deposit accounts.* Institutions may advertise accounts as ''free'' for consumers meeting conditions not related to deposit accounts, such as the consumer's age. For example, institutions may advertise a NOW account as ''free for persons over 65 years old,'' even though a maintenance or activity fee is assessed on accounts held by consumers 65 or younger.

9. *Electronic advertising.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) displays a triggering term (such as a bonus or annual percentage yield) the advertisement must clearly refer the consumer to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the consumer to the additional information.

10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

i. Representing an overdraft service as a ''line of credit,'' unless the service is subject to Regulation Z, 12 CFR part 1026.

ii. Representing that the institution will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.

iii. Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers promptly to return the deposit account to a positive balance.

iv. Describing an institution's overdraft service solely as protection against bounced checks when the institution also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.

v. Advertising an account-related service for which the institution charges a fee in an advertisement that also uses the word ''free'' or ''no cost'' (or a similar term) to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under § 1030.8(a)(2) of this part, however, an advertisement may not describe the account as ''free'' or ''no cost'' (or contain a similar term) even if the fee is disclosed in the advertisement.

11. *Additional disclosures in connection with the payment of overdrafts.* The rule in § 1030.3(a), providing that disclosures required by § 1030.8 may be provided to the consumer in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in § 1030.11(b), which are incorporated by reference in § 1030.8(f).

(b) Permissible rates.

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any interest rates stated must appear in conjunction with the applicable annual percentage yields for each tier.

2. *Stepped-rate accounts.* An advertisement that states an interest rate for a stepped-rate account must state all the interest rates and the time period that each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a given type of account (such as a time account for a specified term) need not state the annual percentage yield applicable to other time accounts offered by the institution or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a time account, institutions need not list each balance level and term offered. Instead, the advertisement may:

i. Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if an institution offers a $25 bonus on all time accounts and the annual percentage yield will vary depending on the term selected, the institution may provide a disclosure of the annual percentage yield as follows: ''For example, our 6-month certificate of deposit currently pays a 3.15% annual percentage yield.''

ii. Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: ''We offer certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month CD earns a 2.75% APY. Or, earn a 5.25% APY for a three-year CD.''

(c) When additional disclosures are required.

1. *Trigger terms.* The following are examples of information stated in advertisements that are not ''trigger'' terms:

i. ''One, three, and five year CDs available.''

ii. ''Bonus rates available.''

iii. ''1% over our current rates,'' so long as the rates are not determinable from the advertisement.

(c)(2) Time annual percentage yield is offered.

1. *Specified date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast

frequency of the media used, taking into account the particular circumstances or production deadlines involved. For example, the printing date of a brochure printed once for a deposit account promotion that will be in effect for six months would be considered ''recent,'' even though rates change during the six-month period. Rates published in a daily newspaper or on television must reflect rates offered shortly before (or on) the date the rates are published or broadcast.

2. *Reference to date of publication.* An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is ''current through the date of this issue,'' if the periodical shows the date.

(c)(5) Effect of fees.

1. *Scope.* This requirement applies only to maintenance or activity fees described in comment 8(a).

(c)(6) Features of time accounts.

(c)(6)(i) Time requirements.

1. *Club accounts.* If a club account has a maturity date but the term may vary depending on when the account is opened, institutions may use a phrase such as: ''The maturity date of this club account is November 15; its term varies depending on when the account is opened.''

(c)(6)(ii) Early withdrawal penalties.

1. *Discretionary penalties.* Institutions imposing early withdrawal penalties on a case-by-case basis may disclose that they ''may'' (rather than ''will'') impose a penalty if such a disclosure accurately describes the account terms.

(d) Bonuses.

1. *General reference to ''bonus.''* General statements such as ''bonus checking'' or ''get a bonus when you open a checking account'' do not trigger the bonus disclosures.

(e) Exemption for certain advertisements.

(e)(1) Certain media.

Paragraph (e)(1)(i).

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements posted on the Internet or sent by email.

Paragraph (e)(1)(iii).

1. *Tiered-rate accounts.* Solicitations for a tiered-rate account made through telephone response machines must provide the annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor signs.

Paragraph (e)(2)(i).

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or a printout from a computer) is not an indoor sign.

Section 1030.9—Enforcement and Record Retention

(c) Record retention.

1. *Evidence of required actions.* Institutions comply with the regulation by demonstrating that they have done the following:

i. Established and maintained procedures for paying interest and providing timely disclosures as required by the regulation, and

ii. Retained sample disclosures for each type of account offered to consumers, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the interest rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Institutions must be able to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files).

3. *Payment of interest.* Institutions must retain sufficient rate and balance information to permit the verification of interest paid on an account, including the payment of interest on the full principal balance.

Section 1030.10—[Reserved]

Section 1030.11—Additional Disclosures Regarding the Payment of Overdrafts

(a) Disclosure of total fees on periodic statements.

(a)(1) General.

1. *Transfer services.* The overdraft services covered by § 1030.11(a)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

2. *Fees for paying overdrafts.* Institutions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The institution must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount for each of these periods includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check, debit card transaction, or by any other transaction type. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to Regulation Z (12 CFR part 1026). *See also* comment 11(c)–2. Under § 1030.11(a)(1)(i), the disclosure must describe the total dollar amount for all fees or charges imposed on the account for the statement period and calendar year-to-date for paying overdrafts using the term ''Total Overdraft Fees.'' This requirement applies notwithstanding comment 3(a)–2.

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Institutions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If an institution assesses and then waives and credits a fee within the same cycle, the institution may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the institution assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

5. *Totals for the calendar year to date.* Some institutions' statement periods do not coincide with the calendar month. In such cases, the institution may disclose a calendar year-to-date total by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2006 through January 9, 2007 may disclose the year-to-date total for fees imposed from January 10, 2006 through January 9, 2007. Alternatively, the institution could provide a statement for the cycle ending January 9, 2007 showing the year-to-date total for fees imposed January 1, 2006 through December 31, 2006.

6. *Itemization of fees.* An institution may itemize each fee in addition to providing the disclosures required by § 1030.11(a)(1) of this part.

(a)(3) Format requirements.

1. *Time period covered by periodic statement disclosures.* The disclosures under § 1030.11(a) must be included on periodic statements provided by an institution starting the first statement period that begins after January 1, 2010. For example, if a consumer's statement period typically closes on the 15th of each month, an institution must provide the disclosures required by § 1030.11(a)(1) on subsequent periodic statements for that consumer beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

(b) Advertising disclosures for overdraft services.

1. *Examples of institutions promoting the payment of overdrafts.* A depository institution would be required to include the advertising disclosures in § 1030.11(b)(1) of this part if the institution:

i. Promotes the institution's policy or practice of paying overdrafts (unless the service would be subject to Regulation Z (12 CFR part 1026)). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. (But see

§ 1030.11(b)(2) of this part for communications that are not subject to the additional advertising disclosures.)

ii. Includes a message on a periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts. For example, an institution that includes a message on a periodic statement informing the consumer of a $500 overdraft limit or that the consumer has $300 remaining on the overdraft limit, is promoting an overdraft service.

iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the institution's Internet site. (See, however, § 1030.11(b)(3) of this part.)

2. *Transfer services.* The overdraft services covered by § 1030.11(b)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

3. *Electronic media.* The exception for advertisements made through broadcast or electronic media, such as television or radio, does not apply to advertisements posted on an institution's Internet site, on an ATM screen, provided on telephone response machines, or sent by electronic mail.

4. *Fees.* The fees that must be disclosed under § 1030.11(b)(1) of this part include per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the institution has previously agreed in writing to pay items that overdraw the account and the service is subject to Regulation Z, 12 CFR Part 1026.

5. *Categories of transactions.* An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means'' would satisfy the requirements of § 1030.11(b)(1)(ii) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)–5 of this part.

6. *Time period to repay.* If a depository institution reserves the right to require a consumer to pay an overdraft immediately or on demand instead of affording consumers a specific time period to establish a positive balance in the account, an institution may comply with § 1030.11(b)(1)(iii) of this part by disclosing this fact.

7. *Circumstances for nonpayment.* An institution must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: ''Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.''

8. *Advertising an account as ''free.''* If the advertised account-related service is an overdraft service subject to the requirements of § 1030.11(b)(1) of this part, institutions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information. Compliance with comment 8(a)–10.v. is not sufficient.

(c) Disclosure of account balances.

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in § 1030.11(c), if an institution discloses balance information to a consumer through an automated system, it must disclose a balance that excludes any funds that the institution may provide to cover an overdraft pursuant to a discretionary overdraft service, that will be paid by the institution under a service subject to Regulation Z (12 CFR Part 1026), or that will be transferred from another account held individually or jointly by a consumer. The balance may, but need not, include funds that are deposited in the consumer's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229). In addition, the balance may, but need not, include funds that are held by the institution to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled).

2. *Retail sweep programs.* In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount, which together make up the consumer's account. The institution allocates and transfers funds between the two subaccounts in order to maximize the balance in the savings account while complying with the monthly limitations on transfers out of savings accounts under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204.2(d)(2)). Retail sweep programs are generally not established for the purpose of covering overdrafts. Rather, institutions typically establish retail sweep programs by agreement with the consumer, in order for the institution to minimize its transaction account reserve requirements and, in some cases, to provide a higher interest rate than the consumer would earn on a transaction account alone. Section 1030.11(c) does not require an institution to exclude from the consumer's balance funds that may be transferred from another account pursuant to a retail sweep program that is established for such purposes and that has the following characteristics:

i. The account involved complies with Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204.2(d)(2));

ii. The consumer does not have direct access to the non-transaction subaccount that is part of the retail sweep program; and

iii. The consumer's periodic statements show the account balance as the combined balance in the subaccounts.

3. *Additional balance.* The institution may disclose additional balances supplemented by funds that may be provided by the institution to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to Regulation Z (12 CFR Part 1026), or a service that transfers funds from another account held individually or jointly by the consumer, so long as the institution prominently states that any additional balance includes these additional overdraft amounts. The institution may not simply state, for instance, that the second balance is the consumer's ''available balance,'' or contains ''available funds.'' Rather, the institution should provide enough information to convey that the second balance includes these amounts. For example, the institution may state that the balance includes ''overdraft funds.'' Where a consumer has not opted into, or as applicable, has opted out of the institution's discretionary overdraft service, any additional balance disclosed should not include funds that otherwise might be available under that service. Where a consumer has not opted into, or as applicable, has opted out of, the institution's discretionary overdraft service for some, but not all transactions (*e.g.* , the consumer has not opted into overdraft services for ATM and one-time debit card transactions), an institution that includes these additional overdraft funds in the second balance should convey that the overdraft funds are not available for all transactions. For example, the institution could state that overdraft funds are not available for ATM and one-time (or everyday) debit card transactions. Similarly, if funds are not available for all transactions pursuant to a service subject to Regulation Z (12 CFR part 1026) or a service that transfers funds from another account, a second balance that includes such funds should also indicate this fact.

4. *Automated systems.* The balance disclosure requirement in § 1030.11(c) applies to any automated system through which the consumer requests a balance, including, but not limited to, a telephone response system, the institution's Internet site, or an ATM. The requirement applies whether the institution discloses a balance through an ATM owned or operated by the institution or through an ATM not owned or operated by the institution (including an ATM operated by a non-depository institution). If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

Appendix A to Part 1030—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

1. *Rounding for calculations.* The following are examples of permissible rounding for calculating interest and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimal places

ii. The daily interest earned carried to five or more decimal places

Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. The balance used in the formula for the annual percentage yield earned is the sum of the balances for each day in the period divided by the number of days in the period.

2. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 1030.7(a)(2).)

A. General Formula

1. *Accrued but uncredited interest.* To calculate the annual percentage yield earned, accrued but uncredited interest:

i. May not be included in the balance for statements issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds interest daily and credits interest monthly, the balance may not be increased each day to reflect the effect of daily compounding.

ii. Must be included in the balance for succeeding statements if a statement is issued more frequently than compounded interest is credited on an account. For example, if monthly statements are sent for an account that compounds interest daily and credits interest quarterly, the balance for the second monthly statement would include interest that had accrued for the prior month.

2. *Rounding.* The interest earned figure used to calculate the annual percentage yield earned must be rounded to two decimals and reflect the amount actually paid. For example, if the interest earned for a statement period is $20.074 and the institution pays the consumer $20.07, the institution must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts paying interest based on the daily balance method that compound and credit interest quarterly, and send monthly statements, the institution may, but need not, round accrued interest to two decimals for calculating the annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the interest earned figure must reflect the amount actually paid.

B. Special Formula for Use Where Periodic Statement Is Sent More Often Than the Period for Which Interest Is Compounded

1. *Statements triggered by Regulation E.* Institutions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. But institutions must use this formula for accounts that compound and credit interest quarterly and receive monthly statements that, while triggered by Regulation E, comply with the provisions of § 1030.6.

2. *Days in compounding period.* Institutions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 1030—Model Clauses and Sample Forms

1. *Modifications.* Institutions that modify the model clauses will be deemed in compliance as long as they do not delete required information or rearrange the format in a way that affects the substance or clarity of the disclosures.

2. *Format.* Institutions may use inserts to a document (see Sample Form B–4) or fill-in blanks (see Sample Forms B–5, B–6 and B–7, which use underlining to indicate terms that have been filled in) to show current rates, fees, or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to consumers when an account is opened, as required by § 1030.4(a)(1). (See § 1030.4(a)(2), which states the requirements for disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request.)

4. *Compliance with Regulation E.* Institutions may satisfy certain requirements under Regulation DD with disclosures that meet the requirements of Regulation E. (See § 1030.3(c).) For disclosures covered by both this part and Regulation E (such as the amount of fees for ATM usage, institutions should consult Appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), institutions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Sample forms.* The sample forms (B–4 through B–8) serve a purpose different from the model clauses. They illustrate ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

B–1 Model Clauses for Account Disclosures

B–1(h) Disclosures Relating to Time Accounts

1. *Maturity.* The disclosure in Clause (h)(i) stating a specific date may be used in all cases. The statement describing a time period is appropriate only when providing disclosures in response to a consumer's request.

B–2 Model Clauses for Change in Terms

1. *General.* The second clause, describing a future decrease in the interest rate and annual percentage yield, applies to fixed-rate accounts only.

B–4 Sample Form (Multiple Accounts)

1. *Rate sheet insert.* In the rate sheet insert, the calculations of the annual percentage yield for the three-month and six-month certificates are based on 92 days and 181 days respectively. All calculations in the insert assume daily compounding.

B–6 Sample Form (Tiered-Rate Money Market Account)

1. *General.* Sample Form B–6 uses Tiering Method A (discussed in Appendix A and Clause (a)(iv)) to calculate interest. It gives a narrative description of a tiered-rate account; institutions may use different formats (for example, a chart similar to the one in Sample Form B–4), as long as all required information for each tier is clearly presented. The form does not contain a separate disclosure of the minimum balance required to obtain the annual percentage yield; the tiered-rate disclosure provides that information.

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1022
Fair Credit Reporting (Regulation V); Interim Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

[Docket No. CFPB–2011–0029]

RIN 3170–AA06

Fair Credit Reporting (Regulation V)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of certain rulemaking authority for the Fair Credit Reporting Act (FCRA) from the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation V (Fair Credit Reporting). This interim final rule does not impose any new substantive obligations on persons subject to the existing FCRA regulations.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0029* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Catherine Henderson or Greg Evans, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act (FCRA), enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.[1] Historically, rulemaking authority for the FCRA has been divided among the Board of Governors of the Federal Reserve System (Board),[2] the Federal Deposit Insurance Corporation (FDIC),[3] the Federal Trade Commission (FTC),[4] the National Credit Union Administration (NCUA),[5] the Office of the Comptroller of the Currency (OCC),[6] and the Office of Thrift Supervision (OTS).[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [8] amended a number of consumer financial protection laws, including most provisions of the FCRA. In addition to substantive amendments, the Dodd-Frank Act transferred rulemaking authority for most provisions of the FCRA to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.[9] Pursuant to the Dodd-Frank Act and the FCRA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation V (Fair Credit Reporting), 12 CFR part 1022, implementing the provisions of the FCRA for which the Bureau has rulemaking authority.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the interagency regulations promulgated under the FCRA by the Board, the FDIC, the FTC, the NCUA, the OCC, and the OTS. In addition, the interim final rule substantially duplicates the following FTC regulations: 16 CFR parts 603, 610, 611, 613, 614, and 642, and associated model forms and disclosures. The interim final rule, published as the Bureau's new Regulation V, 12 CFR part 1022, reproduces the above regulations and associated model forms and interpretations with only certain non-substantive, technical, formatting, and stylistic changes.

To minimize any potential confusion, the Bureau is preserving the numbering of the Board's Regulation V, other than the new part number. This interim final rule generally incorporates the existing regulatory text promulgated by the Board and other agencies with identical regulatory text, as well as appendices (including model forms and clauses), and supplements. Likewise, the interim final rule generally incorporates the above-cited portions of the FTC's regulation (including model forms and clauses) and supplements. The rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. However, this interim final rule does not make substantive changes to the existing regulations.

B. Specific Changes

To minimize any potential confusion, the Bureau is preserving where possible the past numbering system by republishing regulations with Bureau part numbers that correspond to regulations in existence prior to the transfer of rulemaking authority or regulatory text that was used, in this case, by the Board. Thus, for example, § 222.25 of the Board's existing Regulation V will correspond to § 1022.25 of the Bureau's new Regulation V. The newly incorporated

[1] 15 U.S.C. 1681–1681x. The FCRA has been amended numerous times since 1970, including in the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Pub. L. 108–159).

[2] 12 CFR part 222.

[3] 12 CFR part 334.

[4] 16 CFR part 600.

[5] 12 CFR part 717.

[6] 12 CFR part 41.

[7] 12 CFR part 571.

[8] Public Law 111–203, 124 Stat. 1376 (2010).

[9] *See* sections 1061 and 1088 of the Dodd-Frank Act. Dodd-Frank section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

Federal Trade Commission regulations are integrated as follows:

FTC regulation	Bureau regulation
16 CFR part 603	12 CFR 1022.3
16 CFR part 610	12 CFR 1022.130
16 CFR part 611	12 CFR 1022.140
16 CFR part 613	12 CFR 1022.121
16 CFR part 614	12 CFR 1022.123
16 CFR part 642	12 CFR 1022.54

Likewise, the Bureau is republishing model forms and disclosures with Bureau designations that correspond to previous designations of the Board and FTC. The newly incorporated FTC model forms and disclosures are integrated as follows:

FTC form	Bureau form
Appendix A to 16 CFR part 698 (Prescreen Opt Out Notices)	Appendix D to 12 CFR part 1022.
Appendix D to 16 CFR part 698 (Standardized Form for Requesting Annual File Disclosures)	Appendix L to 12 CFR part 1022.
Appendix E to 16 CFR part 698 (Summary of Consumer Identity Theft Rights)	Appendix I to 12 CFR part 1022.
Appendix F to 16 CFR part 698 (General Summary of Consumer Rights)	Appendix K to 12 CFR part 1022.
Appendix G to 16 CFR part 698 (Notice of Furnisher Responsibilities)	Appendix M to 12 CFR part 1022.
Appendix H to 16 CFR part 698 (Notice of User Responsibilities)	Appendix N to 12 CFR part 1022.

The Dodd-Frank Act did not transfer certain rulemaking authority under the FCRA. Specifically, the Act did not transfer to the Bureau the authority to promulgate: rules on the disposal of consumer information;[10] rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation;[11] and rules on the duties of card issuers regarding changes of address.[12] These existing provisions are not included in the Bureau's new Regulation V. The Act also did not transfer rulemaking authority under the FCRA over any motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, subject to certain exceptions.[13]

References to the Board, FTC, and their administrative structures have been replaced with references to the Bureau. Similarly, references to other agencies that no longer exist (*e.g.,* the Office of Thrift Supervision) have been updated as appropriate.

In addition, certain model forms and disclosures in Appendices H (risk-based pricing), I (summary of consumer identity theft rights), K (general summary of consumer rights), M (notice of furnisher responsibilities), N (notice of user responsibilities), and O (identity theft affidavit) have updated references from the Board or FTC Web sites and physical addresses to the Bureau Web site and physical address. The revised forms are the risk-based pricing model forms, H–1 through H–7; the summary of consumer identity theft rights, I; the general summary of consumer rights, K; the notice of furnisher responsibilities, M; the notices of user responsibilities, N; and identity theft affidavit, O. Accordingly, persons making use of the corresponding model forms from any of the other agencies' existing regulations will need to update their forms and disclosures.

To mitigate the impact of these changes on users of the existing model forms, the Bureau is adding new § 1022.1(c) regarding the use of model forms and disclosures generally. New § 1022.1(c)(1) provides that the use of the model forms and disclosures in the Bureau's Appendices D, H, I, K, L, M, and N, or substantially similar forms and disclosures, constitutes compliance with the FCRA provisions requiring such forms and disclosures. New § 1022.1(c)(2) defines ''substantially similar'' for these purposes and also provides that, until January 1, 2013, the model forms in Appendices B, E, F, G, and H to 16 CFR part 698 (the FTC's appendices corresponding to the Bureau's Appendices H, I, K, M, and N, respectively), and the model forms in Appendix H to 12 CFR part 222 (the Board's appendix corresponding to the Bureau's Appendix H) are deemed substantially similar forms. The Bureau expects this provision to afford affected persons sufficient time to modify any forms and disclosures they have developed pursuant to the existing regulations of the Board and the FTC.

The interim rule's Appendix K reflects updates to the Federal agencies that should be listed by particular categories of creditors in the general summary of consumer rights pursuant to § 1022.1(c)(1). Thus, the list has been revised to reflect the elimination of the Office of Thrift Supervision and the grant of enforcement authority, with respect to the banking agencies, under the FCRA to the Bureau for financial institutions with total assets of more than $10 billion and their affiliates.[14]

With regard to nonbank creditors (other than affiliates of large financial institutions), the interim final rule has left the language of Appendix F to the FTC's 16 CFR part 698 unchanged for the time being. The Dodd-Frank Act assigns the Bureau enforcement authority with respect to such nonbank entities generally.[15] The interim rule's Appendix K has been adjusted to focus on the Federal agencies that should be identified in the general summary of consumer rights pursuant to § 1022.1(c)(1). As revised, Appendix K is therefore not intended to describe the allocation of enforcement authority for

[10] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[11] *See* 15 U.S.C. 1681w; section 1088 of the Dodd-Frank Act.

[12] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[13] *See* section 1029 of the Dodd-Frank Act.

[14] *See* Public Law 111–203, section 1025.

[15] The FTC retains the FCRA enforcement authority that it possessed prior to the Dodd-Frank Act. *See* FCRA section 621(a); section 1088(a)(10)(A) of the Dodd-Frank Act.

the FCRA following Dodd-Frank, but rather to specify efficient points of contact. The Bureau expects that agencies that receive FCRA complaints or inquiries will share that information with other agencies as appropriate. The Bureau intends to work closely with other relevant Federal agencies regarding the optimal intake and routing of FCRA-related complaints and inquiries for such nonbank entities. Thus, the Bureau has delayed making additional updates to Appendix K pending this interagency coordination.

Throughout the interim final rule, conforming edits have been made to internal cross-references and addresses for filing applications and notices. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to the FCRA, as amended by the Dodd-Frank Act. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the FCRA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the rulemaking and certain other authorities of the FTC, the Board, the FDIC, the NCUA, the OCC, and the OTS relating to the enumerated consumer laws, including most of the rulemaking authority under the FCRA.[16] Likewise, effective July 21, 2011, section 1088 of the Dodd-Frank Act made conforming amendments to the FCRA transferring rulemaking authority under much of the FCRA, except those regulations applicable to certain motor vehicle dealers,[17] to the Bureau. Accordingly, this interim final rule implements most of the FCRA pursuant to the amended statute, as discussed further below.[18]

The FCRA, as amended, authorizes the Bureau to issue regulations to carry out the purposes of the FCRA.[19] The Bureau is generally authorized to issue regulations as ''necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA], and to prevent evasions thereof or to facilitate compliance therewith.'' [20] The Dodd-Frank Act does not, however, transfer to the Bureau rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records'').[21] Thus, the Bureau's new Regulation V does not include parallel provisions to the other Federal agencies' rules on the disposal of consumer information; the rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation; and the rules on the duties of card issuers regarding changes of address.

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA) [22] generally requires public notice and an opportunity to comment before promulgation of regulations.[23] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[24] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of FCRA authority from the agencies to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the existing FCRA regulations were a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, replacing appropriate nomenclature, to reflect the transfer of authority to the Bureau, and changing the address for filing applications and notices. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the above agencies' regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with the FCRA and its implementing regulations, and the new regulations will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[25]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule. To the extent that one-time modifications to forms are required, the

[16] Section 1002(12)(F) of the Dodd-Frank Act designates most of the FCRA as an ''enumerated consumer law.''

[17] *See* section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

[18] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[19] *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E).

[20] *Id.*

[21] *Id.*

[22] 5 U.S.C. 551 *et seq.*

[23] 5 U.S.C. 553(b), (c).

[24] 5 U.S.C. 553(b)(3)(A), (B).

[25] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

Bureau has provided an ample implementation period to allow appropriate advance notice and facilitate compliance without suspending the benefits of the interim final rule during the intervening period.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[26] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulation V to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with the FCRA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. Although the interim final rule will require the modification of forms to reflect the transfer of authority to the Bureau, as discussed below, the interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

As a general matter, this interim final rule does not impose additional reporting, disclosure, or other requirements beyond those previously in existence. As noted elsewhere in this **SUPPLEMENTARY INFORMATION**, the interim final rule republishes 11 model forms with references to either the Board or the Federal Trade Commission replaced with references to the Bureau. In these cases, covered entities may need to make one-time revisions to their disclosures. The Bureau estimates that these changes will take two hours per form, per firm; the precise number of form changes varies with the type of affected firm. The Bureau thus estimates that these changes will impose a total cost of roughly $98,271,000 spread across approximately 214,000 firms. These costs may be overstated to the extent that multiple firms use the same software vendors, who are able to spread any costs over all of their affected clients. These estimates may also be overstated because the Bureau is giving affected firms one year to effect the changes, thus allowing affected firms to include the changes in routine, scheduled systems updates during the next year. These one-time changes to the affected disclosures ultimately will provide ongoing benefits to consumers by providing them with accurate information on whom to contact for additional information.

Although not required by the interim final rule, affected firms may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation V. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible, and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the firm's convenience. The Bureau intends to continue investigating the possible costs to affected firms of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulation V, as well as regulations implementing thirteen other existing consumer financial laws,[27] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[28] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[29] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[30] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[31]

The IRFA and FRFA requirements described above apply only where a

[26] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[27] The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[28] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[29] 5 U.S.C. 601 *et seq.*

[30] 5 U.S.C. 603, 604.

[31] 5 U.S.C. 609.

notice of proposed rulemaking is required,[32] and the panel requirement applies only when a rulemaking requires an IRFA.[33] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation V. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no new, substantive obligations on covered entities and will require only minor, one-time adjustments to certain model forms, as discussed in part III above. Moreover, as noted, the per-firm cost estimate discussed above may be overstated to the extent that multiple firms use the same software vendors, who are able to spread costs over all of their affected clients. Small entities, in particular, are especially likely to rely on outside vendors for disclosure compliance systems and therefore may have even less burden in complying with the one-time changes required by this interim final rule.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0002.

List of Subjects in 12 CFR Part 1022

Banks, Banking, Consumer protection, Credit unions, Fair Credit Reporting Act, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, State member banks.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1022 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

[32] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[33] 5 U.S.C. 609(b).

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

Subpart A—General Provisions

Sec.
1022.1 Purpose, scope, and model forms and disclosures.
1022.2 Examples.
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Subpart D—Medical Information

1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.
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Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports

1022.50–1022.53 [Reserved]
1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files.

Subpart G—[Reserved]

Subpart H—Duties of Users Regarding Risk-Based Pricing

1022.70 Scope.
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1022.73 Content, form, and timing of risk-based pricing notices.
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Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

1022.80–1022.81 [Reserved]
1022.82 Duties of users regarding address discrepancies.

Subparts J–L—[Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft

1022.120 [Reserved]
1022.121 Active duty alerts.
1022.122 [Reserved]
1022.123 Proof of identity.

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers

1022.130 Definitions
1022.131–1022.135 [Reserved]
1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.
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1022.138 Prevention of deceptive marketing of free credit reports.

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1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency.
Appendix A to Part 1022 [Reserved]
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Appendix E to Part 1022— Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies
Appendices F–G to Part 1022 [Reserved]
Appendix H to Part 1022—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices
Appendix I to Part 1022—Summary of Consumer Identity Theft Rights
Appendix J to Part 1022 [Reserved]
Appendix K to Part 1022—Summary of Consumer Rights
Appendix L to Part 1022—Standardized Form for Requesting Annual File Disclosures
Appendix M to Part 1022—Notice of Furnisher Responsibilities
Appendix N to Part 1022—Notice of User Responsibilities

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Public Law 108–159, 117 Stat. 1952.

Subpart A—General Provisions

§ 1022.1 Purpose, scope, and model forms and disclosures.

(a) *Purpose.* The purpose of this part is to implement the Fair Credit Reporting Act (FCRA). This part generally applies to persons that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish information to consumer reporting agencies.

(b) *Scope.* (1) [Reserved]

(2) *Institutions covered.* (i) Except as otherwise provided in this part, this part applies to any person subject to the FCRA except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act

of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(ii) For purposes of Appendix B to this part, financial institutions as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model notices in Appendix B to this part to comply with the notice requirement in section 623(a)(7) of the FCRA (15 U.S.C. 1681s–2(a)(7)).

(c) *Model forms and disclosures.* (1) *Use.* Appendices D, H, I, K, L, M, and N contain model forms and disclosures. These appendices carry out the directive in FCRA that the Bureau prescribe such model forms and disclosures. Use or distribution of these model forms and disclosures, or substantially similar forms and disclosures, will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by or supplied to any person.

(2) *Definition. Substantially similar* means that all information in the Bureau's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Bureau. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Bureau's prescribed model. Until January 1, 2013, the model forms in Appendices B, E, F, G, and H to 16 CFR part 698, as those appendices existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in Appendices H, I, K, M, and N to this part, and the model forms in Appendix H to 12 CFR part 222, as that appendix existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in Appendix H to this part.

§ 1022.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 1022.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) *Act* means the FCRA (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company. For example, an affiliate of a Federal credit union is a credit union service corporation, as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(c) [Reserved]

(d) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)) (a credit union is presumed to have a controlling influence over the management or policies of a credit union service corporation if the credit union service corporation is 67% owned by credit unions) or, where there is no prudential regulator, by the Bureau; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (d)(1)(i) through (d)(1)(ii).

(e) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Consumer* means an individual.

(g) *Identifying information* means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

(1) Name, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(h) *Identity theft* means a fraud committed or attempted using the identifying information of another person without authority.

(i)(1) *Identity theft report* means a report:

(i) That alleges identity theft with as much specificity as the consumer can provide;

(ii) That is a copy of an official, valid report filed by the consumer with a Federal, state, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(iii) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(A) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in Paragraph (i)(1)(ii) of this section or the request by the consumer for the particular service, whichever shall be the later;

(B) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and

(C) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period set forth in Paragraph (i)(1)(iii)(B) of this section.

(2) Examples of the specificity referenced in Paragraph (i)(1)(i) of this section are provided for illustrative purposes only, as follows:

(i) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(ii) Identification information or any other information about the perpetrator, if known.

(iii) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(iv) Any other information known to the consumer about the identity theft.

(3) Examples of when it would or would not be reasonable to request additional information or documentation referenced in Paragraph

(i)(1)(iii) of this section are provided for illustrative purposes only, as follows:

(i) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or consumer reporting agency to request additional information or documentation.

(ii) A consumer might provide a law enforcement report similar to the report in Paragraph (i)(1) of this section but certain important information such as the consumer's date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnisher or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information. The Bureau's Identity Theft Affidavit is available on the Bureau's Web site (*consumerfinance.gov/learnmore*). The version of this form developed by the Federal Trade Commission, available on the FTC's Web site (*ftc.gov/idtheft*), remains valid and sufficient for this purpose.

(iii) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for a tradeline block or cessation of information furnishing. In such a case, it would be reasonable for an information furnisher or consumer reporting agency to ask that the consumer fill out and have notarized the Bureau's Identity Theft Affidavit or a similar form and provide some form of identification documentation.

(iv) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or email address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

Subpart B—[Reserved]

Subpart C—Affiliate Marketing

§ 1022.20 Coverage and definitions.

(a) *Coverage.* Subpart C of this part applies to any person that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definitions.* For purposes of this subpart:

(1) *Clear and conspicuous.* The term ''clear and conspicuous'' means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(2) *Concise.* (i) *In general.* The term ''concise'' means a reasonably brief expression or statement.

(ii) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(3) *Eligibility information.* The term ''eligibility information'' means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(4) *Pre-existing business relationship.* (i) *In general.* The term ''pre-existing business relationship'' means a relationship between a person, or a person's licensed agent, and a consumer based on:

(A) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this subpart;

(B) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart; or

(C) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

(ii) *Examples of pre-existing business relationships.* (A) If a consumer has a time deposit account, such as a certificate of deposit, at a financial institution that is currently in force, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(B) If a consumer obtained a certificate of deposit from a financial institution, but did not renew the certificate at maturity, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the certificate of deposit.

(C) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer's entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer's loan to an investor but also retains an ownership

interest in the loan, the mortgage lender continues to have a pre-existing business relationship with the consumer, but the investor does not have a pre-existing business relationship with the consumer. If the mortgage lender retains ownership of the loan, but sells ownership of the servicing rights to the consumer's loan, the mortgage lender continues to have a pre-existing business relationship with the consumer. The purchaser of the servicing rights also has a pre-existing business relationship with the consumer as of the date it purchases ownership of the servicing rights, but only if it collects payments from or otherwise deals directly with the consumer on a continuing basis.

(D) If a consumer applies to a financial institution for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the application.

(E) If a consumer makes a telephone inquiry to a financial institution about its products or services and provides contact information to the institution, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(F) If a consumer makes an inquiry to a financial institution by email about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(G) If a consumer has an existing relationship with a financial institution that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated financial institution to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(iii) *Examples where no pre-existing business relationship is created.* (A) If a consumer makes a telephone call to a centralized call center for a group of affiliated companies to inquire about the consumer's existing account at a financial institution, the call does not constitute an inquiry to any affiliate other than the financial institution that holds the consumer's account and does not establish a pre-existing business relationship between the consumer and any affiliate of the account-holding financial institution.

(B) If a consumer who has a deposit account with a financial institution makes a telephone call to an affiliate of the institution to ask about the affiliate's retail locations and hours, but does not make an inquiry about the affiliate's products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the affiliate's capture of the consumer's telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(C) If a consumer makes a telephone call to a financial institution in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that the financial institution's products or services will be marketed to consumers who call in response, the call does not create a pre-existing business relationship between the consumer and the financial institution because the consumer has not made an inquiry about a product or service offered by the institution, but has merely responded to an offer for a free promotional item.

(5) *Solicitation.* (i) *In general.* The term ''solicitation'' means the marketing of a product or service initiated by a person to a particular consumer that is:

(A) Based on eligibility information communicated to that person by its affiliate as described in this subpart; and

(B) Intended to encourage the consumer to purchase or obtain such product or service.

(ii) *Exclusion of marketing directed at the general public.* A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(iii) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, email, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(6) *You* means a person described in paragraph (a) of this section.

§ 1022.21 Affiliate marketing opt-out and exceptions.

(a) *Initial notice and opt-out requirement.* (1) *In general.* You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless:

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to ''opt out,'' or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2) *Example.* A consumer has a homeowner's insurance policy with an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its home equity loan products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The creditor is prohibited from using eligibility information received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the consumer is given a notice and opportunity to opt out and the consumer does not opt out.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph must be provided:

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b) *Making solicitations.* (1) *In general.* For purposes of this subpart, you make a solicitation for marketing purposes if:

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2) *Receiving eligibility information from an affiliate, including through a common database.* You may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that you may access.

(3) *Receipt or use of eligibility information by your service provider.* Except as provided in paragraph (b)(5) of this section, you receive or use an affiliate's eligibility information if a service provider acting on your behalf (whether an affiliate or a nonaffiliated third party) receives or uses that information in the manner described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section. All relevant facts and circumstances will determine whether a person is acting as your service provider when it receives or uses an affiliate's eligibility information in connection with marketing your products and services.

(4) *Use by an affiliate of its own eligibility information.* Unless you have used eligibility information that you receive from an affiliate in the manner described in paragraph (b)(1)(ii) of this section, you do not make a solicitation subject to this subpart if your affiliate:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or

(ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.

(5) *Use of eligibility information by a service provider.* (i) *In general.* You do not make a solicitation subject to Subpart C of this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that you may access) receives eligibility information from your affiliate that your affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market your products or services to the consumer, so long as:

(A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);

(B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market your products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;

(C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;

(D) Your affiliate is identified on or with the marketing materials provided to the consumer; and

(E) You do not directly use your affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) *Writing requirements.* (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between your affiliate and the service provider; and

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(6) *Examples of making solicitations.* (i) A consumer has a deposit account with a financial institution, which is affiliated with an insurance company. The insurance company receives eligibility information about the consumer from the financial institution. The insurance company uses that eligibility information to identify the consumer to receive a solicitation about insurance products, and, as a result, the insurance company provides a solicitation to the consumer about its insurance products. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that after using the eligibility information to identify the consumer to receive a solicitation about insurance products, the insurance company asks the financial institution to send the solicitation to the consumer and the financial institution does so. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company's products.

(iii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have deposit accounts with the financial institution is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the financial institution's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the financial institution. The financial institution reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company's marketing materials and sends marketing materials about the insurance company's products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the financial institution used its own eligibility information. Therefore, pursuant to paragraph

(b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the financial institution provides the insurance company's criteria to the financial institution's service provider and directs the service provider to use the financial institution's eligibility information to identify financial institution consumers who meet the criteria and to send the insurance company's marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use of the financial institution's information to market its products to the financial institution's consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a financial institution, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The financial institution controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the financial institution and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the financial institution's eligibility information in accordance with specific terms and conditions established by the financial institution relating to the marketing of the products and services of all affiliates, including the insurance company. In a separate written communication, the financial institution specifies the terms and conditions under which the service provider may use the financial institution's eligibility information to market the insurance company's products and services to the financial institution's consumers. The specific terms and conditions are: a list of affiliated companies (including the insurance company) whose products or services may be marketed to the financial institution's consumers by the service provider; the specific products or types of products that may be marketed to the financial institution's consumers by the service provider; the categories of eligibility information that may be used by the service provider in marketing products or services to the financial institution's consumers; the types or categories of the financial institution's consumers to whom the service provider may market products or services of financial institution affiliates; the number and/or types of marketing communications that the service provider may send to the financial institution's consumers; and the length of time during which the service provider may market the products or services of the financial institution's affiliates to its consumers. The financial institution periodically evaluates the service provider's compliance with these terms and conditions. The insurance company asks the service provider to market insurance products to certain consumers who have deposit accounts with the financial institution. Without using the financial institution's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the service provider. The service provider uses the financial institution's eligibility information from the common database to identify the financial institution's consumers to whom insurance products will be marketed. When the insurance company's marketing materials are provided to the identified consumers, the name of the financial institution is displayed on the insurance marketing materials, an introductory letter that accompanies the marketing materials, an account statement that accompanies the marketing materials, or the envelope containing the marketing materials. The requirements of paragraph (b)(5) of this section have been satisfied, and the insurance company has not made a solicitation to the consumer.

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the financial institution's eligibility information to market the products and services of other affiliates to the financial institution's consumers whenever the service provider deems it appropriate to do so. The service provider uses the financial institution's eligibility information in accordance with the discretion afforded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c) *Exceptions.* The provisions of this subpart do not apply to you if you use eligibility information that you receive from an affiliate:

(1) To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication about your products or services initiated by the consumer;

(5) In response to an authorization or request by the consumer to receive solicitations; or

(6) If your compliance with this subpart would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d) *Examples of exceptions.* (1) *Example of the pre-existing business relationship exception.* A consumer has a deposit account with a financial institution. The consumer also has a relationship with the financial institution's securities affiliate for management of the consumer's securities portfolio. The financial institution receives eligibility information about the consumer from its securities affiliate and uses that information to make a solicitation to the consumer about the financial institution's wealth management services. The financial institution may make this solicitation even if the consumer has not been given a notice and opportunity to opt out because the financial institution has a pre-existing business relationship with the consumer.

(2) *Examples of service provider exception.* (i) A consumer has an insurance policy issued by an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated financial institution. Based on that eligibility information, the financial institution wants to make a solicitation to the consumer about its deposit products. The financial institution does not have a pre-existing business relationship with the consumer and none of the other exceptions in paragraph (c) of this section apply. The consumer has been given an opt-out notice and has elected to opt out of receiving such

solicitations. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may not send the solicitation on behalf of the financial institution because, as a result of the consumer's opt-out election, the financial institution is not permitted to make the solicitation.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the financial institution because, as a result of the consumer's not opting out, the financial institution is permitted to make the solicitation.

(3) *Examples of consumer-initiated communications.* (i) A consumer who has a deposit account with a financial institution initiates a communication with the financial institution's credit card affiliate to request information about a credit card. The credit card affiliate may use eligibility information about the consumer it obtains from the financial institution or any other affiliate to make solicitations regarding credit card products in response to the consumer-initiated communication.

(ii) A consumer who has a deposit account with a financial institution contacts the institution to request information about how to save and invest for a child's college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the financial institution and one or more affiliates of the institution may be responsive to that communication. Such products or services may include the following: mutual funds offered by the institution's mutual fund affiliate; section 529 plans offered by the institution, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different financial institution in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer's request for information about saving and investing for a child's college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer's credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a financial institution to ask about retail locations and hours, but does not request information about products or services. The institution may not use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the financial institution's products or services. Thus, the use of eligibility information received from an affiliate would not be responsive to the communication and the exception does not apply.

(v) A consumer calls a financial institution to ask about retail locations and hours. The customer service representative asks the consumer if there is a particular product or service about which the consumer is seeking information. The consumer responds that the consumer wants to stop in and find out about certificates of deposit. The customer service representative offers to provide that information by telephone and mail additional information and application materials to the consumer. The consumer agrees and provides or confirms contact information for receipt of the materials to be mailed. The financial institution may use eligibility information it receives from an affiliate to make solicitations to the consumer about certificates of deposit because such solicitations would respond to the consumer-initiated communication about products or services.

(4) *Examples of consumer authorization or request for solicitations.* (i) A consumer who obtains a mortgage from a mortgage lender authorizes or requests information about homeowner's insurance offered by the mortgage lender's insurance affiliate. Such authorization or request, whether given to the mortgage lender or to the insurance affiliate, would permit the insurance affiliate to use eligibility information about the consumer it obtains from the mortgage lender or any other affiliate to make solicitations to the consumer about homeowner's insurance.

(ii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a blank check box that the consumer may check to authorize or request information from the credit card issuer's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from the card issuer's affiliates.

(iii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a pre-selected check box indicating that the consumer authorizes or requests information from the issuer's affiliates. The consumer does not deselect the check box. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(iv) The terms and conditions of a credit card account agreement contain preprinted boilerplate language stating that by applying to open an account the consumer authorizes or requests to receive solicitations from the credit card issuer's affiliates. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(e) *Relation to affiliate-sharing notice and opt-out.* Nothing in this subpart limits the responsibility of a person to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act where applicable.

§ 1022.22 Scope and duration of opt-out.

(a) *Scope of opt-out.* (1) *In general.* Except as otherwise provided in this section, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate as described in the notice to make solicitations to the consumer.

(2) *Continuing relationship.* (i) *In general.* If the consumer establishes a continuing relationship with you or your affiliate, an opt-out notice may apply to eligibility information obtained in connection with:

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with you or your affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and you or your affiliates as described in the notice.

(ii) *Examples of continuing relationships.* A consumer has a continuing relationship with you or your affiliate if the consumer:

(A) Opens a deposit or investment account with you or your affiliate;

(B) Obtains a loan for which you or your affiliate owns the servicing rights;

(C) Purchases an insurance product from you or your affiliate;

(D) Holds an investment product through you or your affiliate, such as when you act or your affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;

(E) Enters into an agreement or understanding with you or your affiliate whereby you or your affiliate undertakes to arrange or broker a home mortgage loan for the consumer;

(F) Enters into a lease of personal property with you or your affiliate; or

(G) Obtains financial, investment, or economic advisory services from you or your affiliate for a fee.

(3) *No continuing relationship.* (i) *In general.* If there is no continuing relationship between a consumer and you or your affiliate, and you or your affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of isolated transactions.* An isolated transaction occurs if:

(A) The consumer uses your or your affiliate's ATM to withdraw cash from an account at another financial institution; or

(B) You or your affiliate sells the consumer a cashier's check or money order, airline tickets, travel insurance, or traveler's checks in isolated transactions.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships.* (i) *In general.* A consumer must be given a new opt-out notice if, after all continuing relationships with you or your affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with you or your affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph (b) of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.

(ii) *Example.* A consumer has a checking account with a financial institution that is part of an affiliated group. The consumer closes the checking account. One year after closing the checking account, the consumer opens a savings account with the same financial institution. The consumer must be given a new notice and opportunity to opt out before the financial institution's affiliates may make solicitations to the consumer using eligibility information obtained by the financial institution in connection with the new savings account relationship, regardless of whether the consumer opted out in connection with the checking account.

(b) *Duration of opt-out.* The election of a consumer to opt out must be effective for a period of at least five years (the ''opt-out period'') beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

§ 1022.23 Contents of opt-out notice; consolidated and equivalent notices.

(a) *Contents of opt-out notice.* (1) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies;''

(ii) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Joint relationships.* (i) If two or more consumers jointly obtain a product or service, a single opt-out notice may be provided to the joint consumers. Any of the joint consumers may exercise the right to opt out.

(ii) The opt-out notice must explain how an opt-out direction by a joint

consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require *all* joint consumers to opt out before implementing *any* opt-out direction.

(3) *Alternative contents.* If the consumer is afforded a broader right to opt out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

(4) *Model notices.* Model notices are provided in Appendix C of this part.

(b) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the entity providing the notice, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(c) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this section.

§ 1022.24 Reasonable opportunity to opt out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by § 1022.21(a)(1)(ii) of this part.

(b) *Examples of a reasonable opportunity to opt out.* The consumer is given a reasonable opportunity to opt out if:

(1) *By mail.* The opt-out notice is mailed to the consumer. The consumer is given 30 days from the date the notice is mailed to elect to opt out by any reasonable means.

(2) *By electronic means.* (i) The opt-out notice is provided electronically to the consumer, such as by posting the notice at a Web site at which the consumer has obtained a product or service. The consumer acknowledges receipt of the electronic notice. The consumer is given 30 days after the date the consumer acknowledges receipt to elect to opt out by any reasonable means.

(ii) The opt-out notice is provided to the consumer by email where the consumer has agreed to receive disclosures by email from the person sending the notice. The consumer is given 30 days after the email is sent to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* The opt-out notice is provided to the consumer at the time of an electronic transaction, such as a transaction conducted on a Web site. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction. There is a simple process that the consumer may use to opt out at that time using the same mechanism through which the transaction is conducted.

(4) *At the time of an in-person transaction.* The opt-out notice is provided to the consumer in writing at the time of an in-person transaction. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, and is not permitted to complete the transaction without making a choice. There is a simple process that the consumer may use during the course of the in-person transaction to opt out, such as completing a form that requires consumers to write a ''yes'' or ''no'' to indicate their opt-out preference or that requires the consumer to check one of two blank check boxes; one that allows consumers to indicate that they want to opt out and one that allows consumers to indicate that they do not want to opt out.

(5) *By including in a privacy notice.* The opt-out notice is included in a Gramm-Leach-Bliley Act privacy notice. The consumer is allowed to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under that privacy notice.

§ 1022.25 Reasonable and simple methods of opting out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable and simple method to opt out, as required by § 1022.21(a)(1)(ii) of this part.

(b) *Examples.* (1) *Reasonable and simple opt-out methods.* Reasonable and simple methods for exercising the opt-out right include:

(i) Designating a check-off box in a prominent position on the opt-out form;

(ii) Including a reply form and a self-addressed envelope together with the opt-out notice;

(iii) Providing an electronic means to opt out, such as a form that can be electronically mailed or processed at a Web site, if the consumer agrees to the electronic delivery of information;

(iv) Providing a toll-free telephone number that consumers may call to opt out; or

(v) Allowing consumers to exercise all of their opt-out rights described in a consolidated opt-out notice that includes the privacy opt-out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* the affiliate sharing opt-out under the Act, and the affiliate marketing opt-out under the Act, by a single method, such as by calling a single toll-free telephone number.

(2) *Opt-out methods that are not reasonable and simple.* Reasonable and simple methods for exercising an opt-out right *do not* include—

(i) Requiring the consumer to write his or her own letter;

(ii) Requiring the consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice;

(iii) Requiring the consumer who receives the opt-out notice in electronic form only, such as through posting at a Web site, to opt out solely by paper mail or by visiting a different Web site without providing a link to that site.

(c) *Specific opt-out means.* Each consumer may be required to opt out through a specific means, as long as that means is reasonable and simple for that consumer.

§ 1022.26 Delivery of opt-out notices.

(a) *In general.* The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in this subpart or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of reasonable expectation of actual notice.* A consumer may reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Hand-delivers a printed copy of the notice to the consumer;

(2) Mails a printed copy of the notice to the last known mailing address of the consumer;

(3) Provides a notice by email to a consumer who has agreed to receive electronic disclosures by email from the affiliate providing the notice; or

(4) Posts the notice on the Web site at which the consumer obtained a product or service electronically and requires the consumer to acknowledge receipt of the notice.

(c) *Examples of no reasonable expectation of actual notice.* A consumer may *not* reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Only posts the notice on a sign in a branch or office or generally publishes the notice in a newspaper;

(2) Sends the notice via email to a consumer who has not agreed to receive electronic disclosures by email from the affiliate providing the notice; or

(3) Posts the notice on a Web site without requiring the consumer to acknowledge receipt of the notice.

§ 1022.27 Renewal of opt-out.

(a) *Renewal notice and opt-out requirement.* (1) *In general.* After the opt-out period expires, you may not make solicitations based on eligibility information you receive from an affiliate to a consumer who previously opted out, unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§ 1022.24 through 1022.26 of this part, and a reasonable opportunity and a reasonable and simple method to renew the opt-out, and the consumer does not renew the opt-out; or

(ii) An exception in § 1022.21(c) of this part applies.

(2) *Renewal period.* Each opt-out renewal must be effective for a period of at least five years as provided in § 1022.22(b) of this part.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph must be provided:

(i) By the affiliate that provided the previous opt-out notice, or its successor; or

(ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) *Contents of renewal notice.* The renewal notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies'';

(2) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(3) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(4) That the consumer previously elected to limit the use of certain information to make solicitations to the consumer;

(5) That the consumer's election has expired or is about to expire;

(6) That the consumer may elect to renew the consumer's previous election;

(7) If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and

(8) A reasonable and simple method for the consumer to opt out.

(c) *Timing of the renewal notice.* (1) *In general.* A renewal notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt-out period; or

(ii) Any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

(2) *Combination with annual privacy notice.* If you provide an annual privacy notice under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt out.

Subpart D—Medical Information

§ 1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to any person that participates as a creditor in a transaction, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *General prohibition on obtaining or using medical information.* (1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction

on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information.* (1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 1022.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of

eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may

not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 1022.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 1022.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply to a person described in paragraph (a) of this section if that person communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A person described in paragraph (a) of this section may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 1022.30 of this part; or

(6) As otherwise permitted by order of the Bureau.

Subpart E—Duties of Furnishers of Information

§ 1022.40 Scope.

Subpart E of this part applies to any person that furnishes information to a consumer reporting agency, except for a person excluded from coverage of this part by section 1029 of the Consumer

Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

§ 1022.41 Definitions.

For purposes of this subpart and Appendix E of this part, the following definitions apply:

(a) *Accuracy* means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

(1) Reflects the terms of and liability for the account or other relationship;

(2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and

(3) Identifies the appropriate consumer.

(b) *Direct dispute* means a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

(c) *Furnisher* means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA;

(2) Is acting as a ''consumer reporting agency'' as defined in section 603(f) of the FCRA;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

(d) *Integrity* means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:

(1) Is substantiated by the furnisher's records at the time it is furnished;

(2) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and

(3) Includes the information in the furnisher's possession about the account or other relationship that the Bureau has:

(i) Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(ii) Listed in section I.(b)(2)(iii) of Appendix E of this part.

§ 1022.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in Appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 1022.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);

(v) Information related to fraud alerts or active duty alerts; or

(vi) Information provided to a consumer reporting agency by another furnisher; or

(2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraphs (c)(1) or (2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable;

(2) The specific information that the consumer is disputing and an

explanation of the basis for the dispute; and

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Duty of furnisher after receiving a direct dispute notice.* After receiving a dispute notice from a consumer pursuant to paragraphs (c) and (d) of this section, the furnisher must:

(1) Conduct a reasonable investigation with respect to the disputed information;

(2) Review all relevant information provided by the consumer with the dispute notice;

(3) Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in paragraph (b) of this section applies.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports

§§ 1022.50–1022.53 [Reserved]

§ 1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files

(a) *Scope.* This subpart applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definitions.* For purposes of this section and Appendix D of this part, the following definitions apply:

(1) *Simple and easy to understand* means:

(i) A layered format as described in paragraph (c) of this section;

(ii) Plain language designed to be understood by ordinary consumers; and

(iii) Use of clear and concise sentences, paragraphs, and sections.

(iv) Examples. For purposes of this part, examples of factors to be considered in determining whether a statement is in plain language and uses clear and concise sentences, paragraphs, and sections include:

(A) Use of short explanatory sentences;

(B) Use of definite, concrete, everyday words;

(C) Use of active voice;

(D) Avoidance of multiple negatives;

(E) Avoidance of legal and technical business terminology;

(F) Avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

(G) Use of language that is not misleading.

(2) *Principal promotional document* means the document designed to be seen first by the consumer, such as the cover letter.

(c) *Prescreen opt-out notice.* Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following statement, consisting of a short portion and a long portion, which shall be in the same language as the offer of credit or insurance:

(1) *Short notice.* The short notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(i) *Content.* The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information.

(ii) *Form.* The short notice shall be:

(A) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12 point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page;

(B) On the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message;

(C) Located on the page and in a format so that the statement is distinct from other text, such as inside a border; and

(D) In a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(2) *Long notice.* The long notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(i) *Content.* The long notice shall state the information required by section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)). The long notice shall not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.

(ii) *Form.* The long notice shall:

(A) Appear in the solicitation;

(B) Be in a type size that is no smaller than the type size of the principal text on the same page, and, for solicitations provided other than by electronic means, the type size shall in no event be smaller than 8 point type;

(C) Begin with a heading in capital letters and underlined, and identifying the long notice as the ''PRESCREEN&OPT-OUT NOTICE;''

(D) Be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(E) Be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

§§ 1022.55–1022.59 [Reserved]

Subpart G—[Reserved]

Subpart H—Duties of Users Regarding Risk-Based Pricing

§ 1022.70 Scope.

(a) *Coverage.* (1) *In general.* This subpart applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137, that both:

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2) *Business credit excluded.* This subpart does not apply to an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Enforcement.* The provisions of this subpart will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 1022.71 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Adverse action* has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) *Annual percentage rate* has the same meaning as in 12 CFR 1026.14(b) with respect to an open-end credit plan and as in 12 CFR 1026.22 with respect to closed-end credit.

(c) *Closed-end credit* has the same meaning as in 12 CFR 1026.2(a)(10).

(d) *Consumer* has the same meaning as in 15 U.S.C. 1681a(c).

(e) *Consummation* has the same meaning as in 12 CFR 1026.2(a)(13).

(f) *Consumer report* has the same meaning as in 15 U.S.C. 1681a(d).

(g) *Consumer reporting agency* has the same meaning as in 15 U.S.C. 1681a(f).

(h) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(i) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(j) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(k) *Credit card issuer* has the same meaning as *card issuer,* as defined in 15 U.S.C. 1681a(r)(1)(A).

(l) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(m) *Firm offer of credit* has the same meaning as in 15 U.S.C. 1681a(l).

(n) *Material terms* means:

(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 1026.6(a)(1)(ii) or 12 CFR 1026.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR 1026.6(b)(2)(i) that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 1026.17(c) and 1026.18(e); and

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.

(o) *Materially less favorable* means, when applied to material terms, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

(p) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Bureau in Regulation Z (12 CFR part 1026) and the Official Interpretations to Regulation Z (Supplement I to 12 CFR part 1026).

(q) *Person* has the same meaning as in 15 U.S.C. 1681a(b).

§ 1022.72 General requirements for risk-based pricing notices.

(a) *In general.* Except as otherwise provided in this subpart, a person must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this subpart if the person both:

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a

substantial proportion of consumers from or through that person.

(b) *Determining which consumers must receive a notice.* A person may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this section, a ''specific type of credit product'' means one or more credit products with similar features that are designed for similar purposes. Examples of a specific type of credit product include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans. As an alternative to making this direct comparison, a person may make the determination by using one of the following methods:

(1) *Credit score proxy method.* (i) *In general.* A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by:

(A) Determining the credit score (hereafter referred to as the ''cutoff score'') that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) *Alternative to the 40/60 cutoff score determination.* In the case of credit that has been granted, extended, or provided on the most favorable material terms to more than 40 percent of consumers, a person may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) *Determining the cutoff score.* (A) *Sampling approach.* A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or provided credit for a specific type of credit product.

(B) *Secondary source approach in limited circumstances.* A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it merged, or from which it acquired the portfolio.

(C) *Recalculation of cutoff scores.* A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a person does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) until it obtains sufficient data on which to base the recalculation. However, the person must recalculate its cutoff score(s) in the manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.

(D) *Use of two or more credit scores.* A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (*e.g.,* if the person sometimes chooses the median score and other times calculates the average score), the person must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the person regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) *Credit score not available.* For purposes of this section, a person using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(v) *Examples.* (A) A credit card issuer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the credit scores of consumers to whom it issued credit cards within the preceding three months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, the card issuer selects 720 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(B) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card

issuer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(C) An auto lender engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless grants, extends, or provides credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method.* (i) *In general.* A person that sets the material terms of credit granted, extended, or provided to a consumer by placing the consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) *Four or fewer pricing tiers.* If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a person that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) *Five or more pricing tiers.* If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a person has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) *Application to credit card issuers.* (1) *In general.* A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when:

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.60, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in § 1022.71(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in § 1022.71(n)(1)(ii) available in connection with the application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if:

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in § 1022.71(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in § 1022.71(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in § 1022.71(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) *Examples.* (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies under § 1022.74, the card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent. The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review.* (1) *In general.* Except as otherwise provided in this subpart, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person:

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in § 1022.71(n)(1)(ii) in the case of a credit card).

(2) *Example.* A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers

in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 1022.73 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice.* (1) *In general.* The risk-based pricing notice required by § 1022.72(a) or (c) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) *Account review.* The risk-based pricing notice required by § 1022.72(d) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

(ii) A statement that the person has conducted a review of the account using information from a consumer report;

(iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;

(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) *Form of the notice.* (1) *In general.* The risk-based pricing notice required by § 1022.72(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms.* Model forms of the risk-based pricing notice required by § 1022.72(a) and (c) are contained in Appendices H–1 and H–6 of this part. Appropriate use of Model Form H–1 or H–6 is deemed to comply with the requirements of § 1022.72(a) and (c). Model forms of the risk-based pricing notice required by § 1022.72(d) are contained in Appendices H–2 and H–7 of this part. Appropriate use of Model Form H–2 or H–7 is deemed to comply with the requirements of § 1022.72(d). Use of the model forms is optional.

(c) *Timing.* (1) *General.* Except as provided in paragraph (c)(3) of this section, a risk-based pricing notice must be provided to the consumer:

(i) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the person required to provide the notice;

(ii) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(iii) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the

annual percentage rate (annual percentage rate referenced in § 1022.71(n)(1)(ii) in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate (to the extent permitted by law), no later than five days after the effective date of the change in the annual percentage rate.

(2) *Application to certain automobile lending transactions.* When a person to whom a credit obligation is initially payable grants, extends, or provides credit to a consumer for the purpose of financing the purchase of an automobile from an auto dealer or other party that is not affiliated with the person, any requirement to provide a risk-based pricing notice pursuant to this subpart is satisfied if the person:

(i) Provides a notice described in §§ 1022.72(a), 1022.74(e), or 1022.74(f) to the consumer within the time periods set forth in paragraph (c)(1)(i) of this section, § 1022.74(e)(3), or § 1022.74(f)(4), as applicable; or

(ii) Arranges to have the auto dealer or other party provide a notice described in §§ 1022.72(a), 1022.74(e), or 1022.74(f) to the consumer on its behalf within the time periods set forth in paragraph (c)(1)(i) of this section, § 1022.74(e)(3), or § 1022.74(f)(4), as applicable, and maintains reasonable policies and procedures to verify that the auto dealer or other party provides such notice to the consumer within the applicable time periods. If the person arranges to have the auto dealer or other party provide a notice described in § 1022.74(e), the person's obligation is satisfied if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

(3) *Timing requirements for contemporaneous purchase credit.* When credit under an open-end credit plan is granted, extended, or provided to a consumer in person or by telephone for the purpose of financing the contemporaneous purchase of goods or services, any risk-based pricing notice required to be provided pursuant to this subpart (or the disclosures permitted under § 1022.74(e) or (f)) may be provided at the earlier of:

(i) The time of the first mailing by the person to the consumer after the decision is made to approve the grant, extension, or other provision of open-end credit, such as in a mailing containing the account agreement or a credit card; or

(ii) Within 30 days after the decision to approve the grant, extension, or other provision of credit.

(d) *Multiple credit scores.* (1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

§ 1022.74 Exceptions.

(a) *Application for specific terms.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using a consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent.

(2) *Example.* A consumer receives a firm offer of credit from a credit card issuer. The terms of the firm offer are based in whole or in part on information from a consumer report that the credit card issuer obtained under the FCRA's firm offer of credit provisions. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the annual percentage rate in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that material term *before,* not *after,* the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a), (c), or (d) if the person provides an adverse action notice to the consumer under section 615(a) of the FCRA.

(c) *Prescreened solicitations.* (1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2) *More favorable material terms.* This exception applies to any firm offer of credit offered by a person to a consumer, even if the person makes other firm offers of credit to other consumers on more favorable material terms.

(3) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a

firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement.

(d) *Loans secured by residential real property—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under § 1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores.* (i) *In general.* When a person obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (d)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (d)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraph (d)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* (A) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notice described in paragraph (d)(1)(ii) of this section.

(B) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in Appendix H–3 of this part. Appropriate use of Model Form H–3 is deemed to comply with the requirements of § 1022.74(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure.* (1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under § 1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit other than credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(J) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores.* (i) *In general.* When a person obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (e)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (e)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraph (e)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* The manner in which multiple credit scores are to be disclosed under this section are substantially identical to the manner set forth in the examples contained in paragraph (d)(4)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in Appendix H–4 of this part. Appropriate use of Model Form H–4 is deemed to comply with the requirements of § 1022.74(e). Use of the model form is optional.

(f) *Credit score not available.* (1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under § 1022.72(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or provides credit;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following:

(A) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may

satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in Appendix H–5 of this part. Appropriate use of Model Form H–5 is deemed to comply with the requirements of § 1022.74(f). Use of the model form is optional.

§ 1022.75 Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under § 1022.72(a) or (c), or one notice under § 1022.74(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 1022.72(d) have been met.

(b) *Multi-party transactions.* (1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 1022.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this subpart and is not required to provide the risk-based pricing notice described in § 1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 1022.74(d), (e), or (f).

(3) *Example.* A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer. However, the bank or finance company may comply with this rule if the auto dealer has agreed to provide notices to consumers before consummation pursuant to an arrangement with the bank or finance company, as permitted under § 1022.73(c).

(c) *Multiple consumers.* (1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of § 1022.72(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

(2) *Credit score disclosure notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a separate notice to each consumer to satisfy the exceptions in § 1022.74(d), (e), or (f). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer. Each separate notice must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer.

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this subpart. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§§ 1022.80–1022.81 [Reserved]

§ 1022.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to a user of consumer reports (user) that receives a notice of address discrepancy from a consumer reporting agency described in 15 U.S.C. 1681a(p), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Reasonable belief.* (1) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

(2) *Examples of reasonable policies and procedures.* (i) Comparing the information in the consumer report provided by the consumer reporting agency with information the user:

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules

implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

(B) Maintains in its own records, such as applications, change of address notifications, other customer account records, or retained CIP documentation; or

(C) Obtains from third-party sources; or

(ii) Verifying the information in the consumer report provided by the consumer reporting agency with the consumer.

(d) *Consumer's address.* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report;

(ii) Establishes a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

(2) *Examples of confirmation methods.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the consumer about whom it has requested the report;

(ii) Reviewing its own records to verify the address of the consumer;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) Timing. The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

Subparts J–L—[Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft

§ 1022.120 [Reserved]

§ 1022.121 Active duty alerts.

(a) *Duration.* The duration of an active duty alert shall be twelve months.

§ 1022.122 [Reserved]

§ 1022.123 Appropriate proof of identity.

(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the FCRA. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer.

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1) *Consumer file match.* The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street number and name, apt. no., city, state, and zip code), full nine digits of Social Security number, and/or date of birth.

(2) *Additional proof of identity.* Copies of government issued identification documents, utility bills, and/or other methods of authentication of a person's identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

§§ 1022.124–1022.129 [Reserved]

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers

§ 1022.130 Definitions

For purposes of this subpart, the following definitions apply:

(a) *Annual file disclosure* means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any twelve month period, in compliance with section 612(a) of the FCRA, 15 U.S.C. 1681j(a).

(b) *Associated consumer reporting agency* means a consumer reporting agency that owns or maintains consumer files housed within systems operated by one or more nationwide consumer reporting agencies.

(c) *Consumer report* has the meaning provided in section 603(d) of the FCRA, 15 U.S.C. 1681a(d).

(d) *Consumer reporting agency* has the meaning provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(e) *Extraordinary request volume* occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 175 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then extraordinary request volume would be any volume greater than 175 percent of one hundred, *i.e.,* 176 or more requests in a single twenty-four hour period.

(f) *File disclosure* means a disclosure by a consumer reporting agency pursuant to section 609 of the FCRA, 15 U.S.C. 1681g.

(g) *High request volume* occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 125 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then high request volume would be any volume greater than 125 percent of one hundred, *i.e.,* 126 or more requests in a single twenty-four hour period.

(h) *Nationwide consumer reporting agency* means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(i) *Nationwide specialty consumer reporting agency* has the meaning provided in section 603(w) of the FCRA, 15 U.S.C. 1681a(w).

(j) *Request method* means the method by which a consumer chooses to communicate a request for an annual file disclosure.

§§ 1022.131–1022.135 [Reserved]

§ 1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the FCRA, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized

source for the purpose described in Paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers' option:

(i) A single, dedicated Web site,

(ii) A single, dedicated toll-free telephone number; and

(iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with Paragraph (c) of this section;

(ii) Collects only as much personally identifiable information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source Web site and telephone number regarding how to make a request by all request methods required under paragraph (b)(1) of this section; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Bureau;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers' identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the Web site or telephone number for ordering free annual credit reports as required by Federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Web site required under paragraph (b)(1) of this section, from the centralized source required by this part. The form provided at Appendix L to part 1022, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers' request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the FCRA, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *High request volume and extraordinary request volume.* (1) *High request volume.* Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (c) of this section, entitled ''requirement to anticipate,'' the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with Paragraph (c) of this section, entitled ''requirement to anticipate,'' the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) *Communications provided through centralized source.* (1) Any advertising or marketing for products or services, any communications or instructions that advertise or market any products or services, or any request to establish an account through the centralized source must be delayed until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or telephone, the consumer ''has obtained his or her annual file disclosure'' when the file disclosure is mailed, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(ii) In the case of requests made through the centralized source Web site, the consumer ''has obtained his or her annual file disclosure'' when the file disclosure is delivered to the consumer through the Internet, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in Paragraph (a) of this section.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product or service in order to receive or to understand the annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumers' credit standing; and

(iii) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(h) *Other practices prohibited through the centralized source.* The centralized source shall not:

(1) Contain hyperlinks to commercial or proprietary Web sites until after the consumer has obtained his or her annual file disclosure, except for technical transfers to a Web page on which consumers can request their free annual file disclosure; provided, however, that no hyperlinks to commercial Web sites shall appear on the initial page of the centralized source.

(2) Require consumers to set up an account in connection with obtaining an annual file disclosure; or

(3) Ask or require consumers to agree to terms or conditions in connection with obtaining an annual file disclosure.

§ 1022.137 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) *Streamlined process requirements.* Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by any additional available request methods, that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process required by this part;

(ii) Is published, in conjunction with all other published numbers for the nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and

(iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency through the streamlined process, as determined in compliance with Paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumers request while the consumer is in the process of making a request;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Bureau; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b) *Requirement to anticipate.* A nationwide specialty consumer

reporting agency shall implement reasonable procedures to anticipate, and respond to, the volume of consumers who will contact the nationwide specialty consumer reporting agency through the streamlined process to request, or attempt to request, file disclosures, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency through the streamlined process.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumers request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section if the toll-free telephone number required by this part is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the nationwide specialty consumer reporting agency makes other request methods available to consumers during such time.

(c) *High request volume and extraordinary request volume.* (1) *High request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled ''requirement to anticipate,'' a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences high request volume, if the nationwide specialty consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled ''requirement to anticipate,'' a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the streamlined process, may be used or disclosed by the nationwide specialty consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide specialty consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Requirement to accept or redirect requests.* If a consumer requests an annual file disclosure through a method other than the streamlined process established by the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency shall:

(1) Accept the consumers request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

§ 1022.138 Prevention of deceptive marketing of free credit reports.

(a) For purposes of this section:

(1) *AnnualCreditReport.com and (877) 322–8228* means the Uniform Resource Locator address ''AnnualCreditReport.com'' and toll-free telephone number, (877) 322–8228. These are the locator address and toll-free telephone number currently used by the centralized source. If the locator address or toll-free telephone number changes in the future, the new address or telephone number shall be substituted within a reasonable time.

(2) *Free credit report* means a file disclosure prepared by or obtained from, directly or indirectly, a nationwide consumer reporting agency (as defined in section 603(p) of the FCRA), that is represented, either expressly or impliedly, to be available to the consumer at no cost if the consumer purchases a product or service, or agrees to purchase a product or service subject to cancellation.

(3) *General requirements for disclosures.* The disclosures covered by Paragraph (b) of this section shall contain only the prescribed content and comply with the following requirements:

(i) All disclosures shall be prominent;

(ii) All disclosures shall be made in the same language as that principally used in the advertisement;

(iii) Visual disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; and parallel to the base of the advertisement or screen;

(iv) Audio disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(v) Program-length television, radio, or Internet-hosted multimedia

advertisement disclosures shall be made at the beginning, near the middle, and at the end of the advertisement; and

(vi) Nothing contrary to, inconsistent with, or that undermines the required disclosures shall be used in any advertisement in any medium, nor shall any audio, visual, or print technique be used that is likely to detract significantly from the communication of any disclosure.

(b) *Medium-specific disclosures.* All offers of free credit reports shall prominently include the disclosures required by this section.

(1) *Television advertisements.* (i) All advertisements for free credit reports broadcast on television shall include the following disclosure in close proximity to the first mention of a free credit report: ''This is not the free credit report provided for by Federal law.''

(ii) The disclosure shall appear at the same time in the audio and visual part of the advertisement. The visual disclosure shall be at least four percent of the vertical picture height and appear for a minimum of four seconds.

(2) *Radio advertisements.* All advertisements for free credit reports broadcast on radio shall include the following disclosure in close proximity to the first mention of a free credit report: ''This is not the free credit report provided for by Federal law.''

(3) *Print advertisements.* All advertisements for free credit reports in print shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: ''THIS NOTICE IS REQUIRED BY LAW.'' Immediately below the first line of the disclosure the following language shall appear: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' Each letter of the disclosure text shall be, at minimum, one-half the size of the largest character used in the advertisement.

(4) *Web sites.* Any Web site offering free credit reports must display the disclosure set forth in paragraphs (b)(4)(i), (ii), and (v) of this section on each page that mentions a free credit report and on each page of the ordering process. This disclosure shall be visible across the top of each page where the disclosure is required to appear; shall appear inside a box; and shall appear in the form specified below:

(i) The first element of the disclosure shall be a header that is centered and shall consist of the following text: ''THIS NOTICE IS REQUIRED BY LAW. Read more at *consumerfinance.gov/learnmore.*'' Each letter of the header shall be one-half the size of the largest character of the disclosure text required by paragraph (b)(4)(ii) of this section. The reference to *consumerfinance.gov/learnmore* shall be an operational hyperlink, underlined, and in a color that is a high degree of contrast from the color of the other disclosure text and background color of the box. Until January 1, 2013, ''www.ftc.gov'' and the corresponding hyperlink may be substituted for ''consumerfinance.gov/learmore'' and the corresponding hyperlink;

(ii) The second element of the disclosure shall appear below the header required by paragraph (b)(4)(i) and shall consist of the following text: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' The reference to *AnnualCreditReport.com* shall be an operational hyperlink to the centralized source, underlined, and in the same color as the hyperlink to *consumerfinance.gov/learnmore* required in § 1022.138(b)(4)(i);

(iii) The color of the text required by § 1022.138(b)(4)(i) and (ii) shall be in a high degree of contrast with the background color of the box;

(iv) The background of the box shall be a solid color in a high degree of contrast from the background of the page and the color shall not appear elsewhere on the page;

(v) The third element of the disclosure shall appear below the text required by paragraph (b)(4)(ii) and shall be an operational hyperlink to *AnnualCreditReport.com* that appears as a centered button containing the following language: ''Take me to the authorized source.'' The background of this button shall be the same color as the hyperlinks required by § 1022.138(b)(4)(i) and (ii) and the text shall be in a high degree of contrast to the background of the button;

(vi) Each character of the text required in paragraph (b)(4)(ii) and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner;

(vii) Each character of the disclosure shall be displayed as plain text and in a sans serif font, such as Arial; and

(viii) The space between each element of the disclosure required in paragraph (b)(i), (ii), and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner. The space between the boundaries of the box and the text or button required in § 1022.138(b)(i), (ii), and (v) shall be, at minimum, twice the size of the vertical height of the largest character on the page, including characters in an image or graphic banner.

(5) *Internet-hosted multimedia advertising.* All advertisements for free credit reports disseminated through Internet-hosted multimedia in both audio and visual formats shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: ''THIS NOTICE IS REQUIRED BY LAW.'' Immediately below the first line of the disclosure the following language shall appear: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' The disclosure shall appear at the same time in the audio and visual part of the advertisement. If the advertisement contains characters, the visual disclosure shall be, at minimum, the same size as the largest character on the advertisement.

(6) *Telephone requests.* When consumers call any telephone number, other than the number of the centralized source, appearing in an advertisement that represents free credit reports are available at the number, consumers must receive the following audio disclosure at the first mention of a free credit report: ''The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.''

(7) *Telemarketing solicitations.* When telemarketing sales calls are made that include offers of free credit reports, the call must include at the first mention of a free credit report the following disclosure: ''The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.''

§ 1022.139 [Reserved]

Subpart O—Miscellaneous Duties of Consumer Reporting Agencies

§ 1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency

(a) A consumer reporting agency shall not circumvent or evade treatment as a ''consumer reporting agency that compiles and maintains files on consumers on a nationwide basis,'' as

defined under section 603(p) of the FCRA, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in Paragraphs (1) and (2) of section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(b) *Examples:*

(1) *Circumvention through reorganization by data type.* XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer maintains public record information. XYZ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) *Circumvention through reorganization by regional operations.* PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) *Circumvention by a newly formed entity.* Smith Co. is a new entrant in the marketplace for consumer reports that bear on a consumer's credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co.'s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) *Bona fide, arm's length transaction with unaffiliated party.* Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arm's length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers residing nationwide, and ceases to offer reports containing public record information. Foster Ltd.'s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd.'s conduct does not violate this part.

(c) *Limitation on applicability.* Any person who is otherwise in violation of paragraph (a) of this section shall be deemed to be in compliance with this part if such person is in compliance with all obligations imposed upon consumer reporting agencies that compile and maintain files on consumers on a nationwide basis under the FCRA, 15 U.S.C. 1681 *et seq.*

Appendix A to Part 1022 [Reserved]

Appendix B to Part 1022—Model Notices of Furnishing Negative Information

a. Although use of the model notices is not required, a financial institution that is subject to section 623(a)(7) of the FCRA shall be deemed to be in compliance with the notice requirement in section 623(a)(7) of the FCRA if the institution properly uses the model notices in this appendix (as applicable).

b. A financial institution may use Model Notice B–1 if the institution provides the notice prior to furnishing negative information to a nationwide consumer reporting agency.

c. A financial institution may use Model Notice B–2 if the institution provides the notice after furnishing negative information to a nationwide consumer reporting agency.

d. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that this appendix provides. Acceptable changes include, for example,

1. Rearranging the order of the references to ''late payment(s),'' or ''missed payment(s).''

2. Pluralizing the terms ''credit bureau,'' ''credit report,'' and ''account.''

3. Specifying the particular type of account on which information may be furnished, such as ''credit card account.''

4. Rearranging in Model Notice B–1 the phrases ''information about your account'' and ''to credit bureaus'' such that it would read ''We may report to credit bureaus information about your account.''

Model Notice B–1

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Model Notice B–2

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

Appendix C to Part 1022—Model Forms for Opt-Out Notices

a. Although use of the model forms is not required, use of the model forms in this appendix (as applicable) complies with the requirement in section 624 of the Act for clear, conspicuous, and concise notices.

b. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to ''your income,'' ''your account history,'' and ''your credit score.''

2. Substituting other types of information for ''income,'' ''account history,'' or ''credit score'' for accuracy, such as ''payment history,'' ''credit history,'' ''payoff status,'' or ''claims history.''

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as ''the [ABC] group of companies,'' including without limitation a statement that the entity providing the notice recently purchased the consumer's account.

4. Substituting other types of affiliates covered by the notice for ''credit card,'' ''insurance,'' or ''securities'' affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: ''If you previously opted out, you do not need to do so again.''

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 1022.23(a)(2) of this part.

C–1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)
C–2 Model Form for Initial Opt-out Notice (Joint Notice)
C–3 Model Form for Renewal Notice (Single-Affiliate Notice)
C–4 Model Form for Renewal Notice (Joint Notice)
C–5 Model Form for Voluntary ''No Marketing'' Notice

C–1—Model Form for Initial Opt-Out Notice (Single-Affiliate Notice)—[Your Choice To Limit Marketing]/[Marketing Opt-Out]

• [Name of Affiliate] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

• You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].

• Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Do not allow your affiliates to use my personal information to market to me.

C–2—Model Form for Initial Opt-Out Notice (Joint Notice)—[Your Choice To Limit Marketing]/[Marketing Opt-Out]

• The [ABC group of companies] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

• You may limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

• Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].

• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C–3—Model Form for Renewal Notice (Single-Affiliate Notice)—[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt-Out]

• [Name of Affiliate] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

• You previously chose to limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].

• Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Renew my choice to limit marketing for [x] more years.

C–4—Model Form for Renewal Notice (Joint Notice)—[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt-Out]

• The [ABC group of companies] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

• You previously chose to limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other ABC companies. This information includes your [income], your [account history], and your [credit score].

• Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Renew my choice to limit marketing for [x] more years.

C–5—Model Form for Voluntary ''No Marketing'' Notice—[Your Choice To Stop Marketing]

• [Name of Affiliate] is providing this notice.

• You may choose to stop all marketing from us and our affiliates.

• [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

• By telephone: 1 (877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

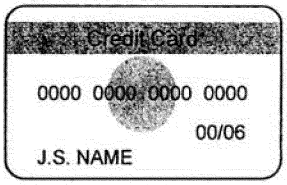
—Do not market to me.

Appendix D to Part 1022—Model Forms for Firm Offers of Credit or Insurance

In order to comply with § 1022.54, the following model notices may be used:

(a) *English language model notice.* (1) *Short notice.*

BILLING CODE 4810–AM–P



Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

PFOR 00 MON
FIXED ABC

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

BALANCE TR
FOR 00 MONTHS

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

NO MONTHS FEE

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way peop. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit a smart kind of credit card.

INTERNET SECURITY
SECURITY

So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.

ONLINE FRAUD PRO
GUARANTEE

We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

YOUR BALANCE
PAY YOUR BILL

Sincerely,

John W. Doe
President, Credit Card Company

FEE-FREE REWARDS
PROGRAM

You can choose to stop receiving "prescreened" offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

(2) *Long notice.*

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

HEADER

Percent Rate for	Other ABCs	Variable info material	Grace or repases Are placed here	Computing the balast	Annual Fee	Usual Place Finance Charge
Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.	Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.	Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.	Back in the last century, we saw how technology was changing.	Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.	Back long ago.	Back in the last century, we saw how technology.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

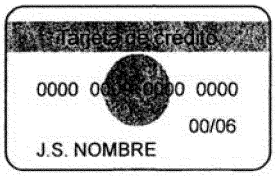
Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

TERMS AND CONDITIONS

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.



Aquí están líneas crédito

J.S. Nombre
1234 Calle Amistosa
Ciudad, ST 12345

Estimada Señora Nombre:

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Sinceramente,

John W. Doe
Presidente, Compañía

PFOR 00 MON FIJO ABC

■

TRANSFERENCIA DE BALANCE POR MESES

■

SIN CUOTA MENSUAL

■

PAGO ELECTRÓNICO SEGURO

■

PROTECCIÓN CONTRA FRAUDE EN LÍNEA GARANTIZADO

■

SU BALANCE PAGA SU CUENTA

■

PROGRAMA DE RECOMPENSAS SIN CUENTA

Usted puede elegir no recibir más "ofertas de [crédito o seguro] pre-investigadas" de esta y otras compañías llamando sin cargos al [número sin cargo]. Ver la NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA al otro lado de esta página [o en otro lugar] para más información sobre ofertas pre-investigadas.

(2) *Long notice.*

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente.

AQUÍ ESTÁN

Protección Contra Fraude	Programa de Recompensas	Su Balance Paga	Sin Cuota Mensual	Protección Contra Fraude	Recompensas Sin Cuenta	Sin Cuota Mensual
En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la gente hace las cosas. Así que cremos.	Así que creamos una tarjeta de crédito inteligente.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Así que cremos.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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TERMINOS Y CONDICIONA

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

<u>NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA</u>: Esta oferta de [crédito o seguro] está basada en información contenida en su informe de crédito que indica que usted cumple con ciertos criterios [incluyendo la condición de tener propiedades aceptables como colateral]. Si usted no cumple con nuestros criterios, esta oferta no está garantizada. Si usted no desea recibir ofertas de [crédito o seguro] pre-investigadas de ésta y otras compañías, llame a las agencias de información del consumidor [o nombre de la agencia de información del consumidor] sin cargos, [número sin cargo]; o escriba a: [nombre de la agencia de información del consumidor y dirección de correo].

En el siglo pasado vimos como: la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

BILLING CODE 4810–AM–C

Appendix E to Part 1022—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Bureau encourages voluntary furnishing of information to consumer reporting agencies. Section 1022.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 1022.42(b) of this part, a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 1022.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

I. Nature, Scope, and Objectives of Policies and Procedures

(a) *Nature and Scope.* Section 1022.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In developing its policies and procedures, a furnisher should consider, for example:

(1) The types of business activities in which the furnisher engages;

(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b) *Objectives.* A furnisher's policies and procedures should be reasonably designed to promote the following objectives:

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

(i) Identifies the appropriate consumer;

(ii) Reflects the terms of and liability for those accounts or other relationships; and

(iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:

(i) Is substantiated by the furnisher's records at the time it is furnished;

(ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

(A) Include appropriate identifying information about the consumer to whom it pertains; and

(B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and

(iii) Includes the credit limit, if applicable and in the furnisher's possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

(i) Any transfer of an account (*e.g.,* by sale or assignment for collection) to a third party; and

(ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;

(4) Obtaining feedback from the furnisher's staff; and

(5) Considering the potential impact of the furnisher's policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. Specific Components of Policies and Procedures

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the FCRA and its implementing regulations.

Appendices F–G to Part 1022 [Reserved]

Appendix H to Part 1022—Appendix H—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is not used in setting the material terms of credit. Model form H–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form H–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form H–6 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is used in setting the material terms of credit. Model form H–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

3. A person may change the forms by rearranging the format or by making technical modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any such rearrangement or modification of the language of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Persons making revisions with that effect will lose the benefit of the safe harbor for appropriate use of Appendix H model forms. A person is not required to conduct consumer testing when rearranging the format of the model forms.

a. Acceptable changes include, for example:

i. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.

ii. The addition of graphics or icons, such as the person's corporate logo.

iii. Alteration of the shading or color contained in the model forms.

iv. Use of a different form of graphical presentation to depict the distribution of credit scores.

v. Substitution of the words ''credit'' and ''creditor'' or ''finance'' and ''finance company'' for the terms ''loan'' and ''lender.''

vi. Including pre-printed lists of the sources of consumer reports or consumer reporting agencies in a ''check-the-box'' format.

vii. Including the name of the consumer, transaction identification numbers, a date, and other information that will assist in identifying the transaction to which the form pertains.

viii. Including the name of an agent, such as an auto dealer or other party, when providing the ''Name of the Entity Providing the Notice.''

ix. Until January 1, 2013, substituting ''For more information about credit reports and your rights under Federal law, visit the Federal Reserve Board's Web site at *www.federalreserve.gov,* or the Federal Trade Commission's Web site at *www.ftc.gov.*'' for ''For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's Web site at *www.consumerfinance.gov/learnmore.*''

b. Unacceptable changes include, for example:

i. Providing model forms on register receipts or interspersed with other disclosures.

ii. Eliminating empty lines and extra spaces between sentences within the same section.

4. If a person uses an appropriate Appendix H model form, or modifies a form in accordance with the above instructions, that person shall be deemed to be acting in compliance with the provisions of § 1022.73 or § 1022.74, as applicable, of this part. It is intended that appropriate use of Model Form H–3 also will comply with the disclosure that may be required under section 609(g) of the FCRA. Optional language in model forms H–6 and H–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

H–1 Model form for risk-based pricing notice.

H–2 Model form for account review risk-based pricing notice.

H–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property.

H–4 Model form for credit score disclosure exception for loans not secured by residential real property.

H–5 Model form for credit score disclosure exception for loans where credit score is not available.

H–6 Model form for risk-based pricing notice with credit score information.

H–7 Model form for account review risk-based pricing notice with credit score information.

BILLING CODE 4810–AM–P

H-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-2. Model form for account review risk-based pricing notice

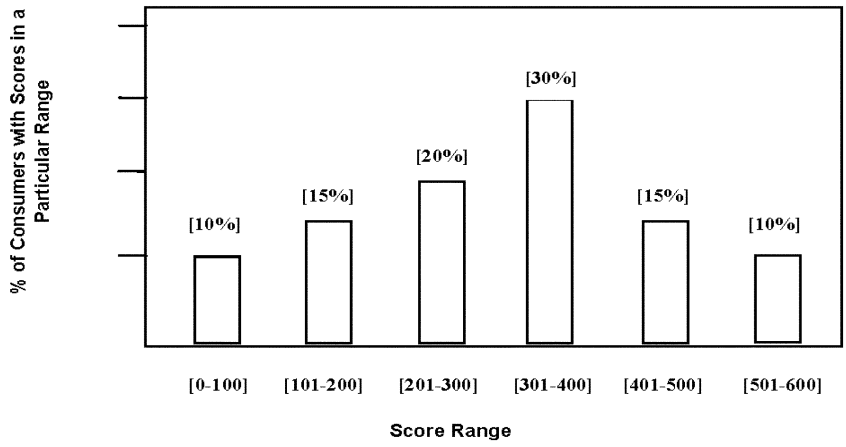
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

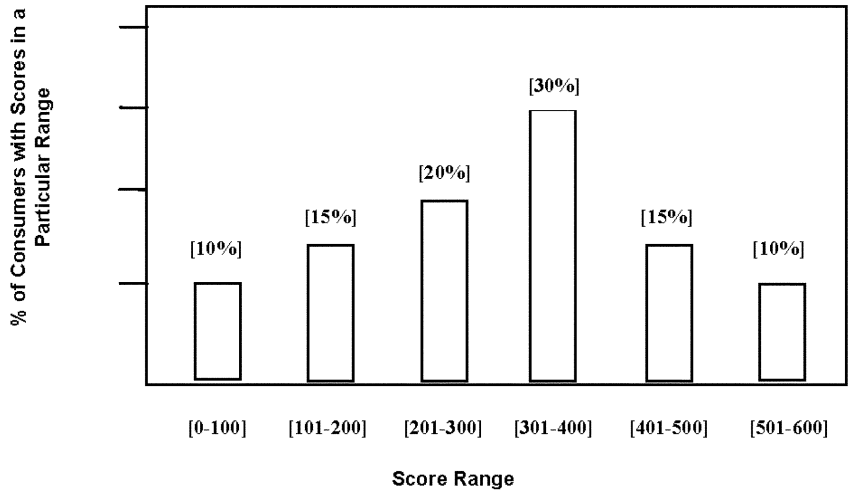
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

H-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.
Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request

	Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-6. Model form for risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[insert bottom number in the range]** to a high of **[insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ _____ _____ [Toll-free] Telephone number:_____]

H-7. Model form for account review risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[insert bottom number in the range]** to a high of **[insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ _____ _____ [Toll-free] Telephone number:_____]

Appendix I to Part 1022—Summary of Consumer Identity Theft Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para infomacion en espanol, visite www.consumerfinance.gov o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open credit card account or get a loan in your name. For more information, visit www.consumerfinance.gov or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. **You have the right to ask the nationwide consumer reporting agencies place "fraud alerts" in your file** to let potential creditors and others know that you may be a victim of identity theft**.** A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

• Equifax: 1-800-XXX-XXXX; www.equifax.com
• Experian: 1-800-XXX-XXXX; www.experian.com
• Trans Union: 1800-XXX-XXXX; www.transunion.com

An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identify theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.consumerfinanace.gov.

2. **You have the right to free copies of the information in your file (your "file disclosure").** An initial fraud alert entities you to a copy of all information in your file at each of the three nationwide agencies, and an extended alert entitles you or two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been open in your name or whether someone has reported a change in you address. Once a year, you also have the right to a free copy of the information in your file.

at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.ftc.gov/credit.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It also may specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumer.gov/idtheft.

4. **You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.

5. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your *identity theft report.* The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. **You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an *identity theft report.*

To learn more about identity theft and how to deal with its consequences, visit www.consumer.gov/idtheft, or write to the FTC. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.ftc.gov/credit.

Appendix J to Part 1022 [Reserved]

Appendix K to Part 1022—Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (*e.g.,* dollar amounts, or telephone numbers and addresses of Federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para infomacion en espanol, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However , a consumer reporting agency may continue to report information it has verified as accurate.

• **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

•**Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

•**You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.

•**You many limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-800-XXX-XXXX.

• **You may seek damages from violators.** If a consumer reporting agency, or in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

•**Identity theft victims and active duty military personnel have additional rights**. For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates. b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau:	a. Bureau of Consumer Financial Protection 1700 G Street NW Washington, DC 20006 b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks b. 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 c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations d. Federal Credit Unions	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010–9050 b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480 c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106 d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation 400 Seventh Street SW Washington, DC 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 1925 K Street NW Washington, DC 20423
5. Creditors Subject to Packers and Stockyards Act	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F St NE Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102–5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

Appendix L to Part 1022—Standardized Form for Requesting Annual File Disclosures

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: **You have the right to obtain a free copy of your credit report once every 12 months (also known as an "annual file disclosure"), from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you've paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.**

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: _____

Your Street Address: _____

Your City, State & Zip Code: _____

Your Telephone Numbers (with area code): Day: _____
Evening: _____

Your Social Security number: _____ Your Date of Birth_____

Place a check next to each credit report you want.

_____ I want a credit report from each of the nationwide consumer reporting agencies

OR

_____ I want a credit report from:

_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

_____ [available delivery method]
_____ [available delivery method]
_____ [available delivery method]

_____ Check here if, for security purposes, you want your copy of your credit report to include only the last four digits of your Social Security number (SSN), rather than your entire SSN.

For more information on obtaining your free credit report, visit [insert appropriate website address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:
[insert appropriate address]

Your report(s) will be sent within 15 days after we receive your request.

Appendix M to Part 1022—Notice of Furnisher Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

All furnishers of consumer reports must comply with all applicable regulations, including regulations promulgated after this notice was first prescribed in 2004. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHES UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C 1681s-2. State law may impose additional requirements on furnishes. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with counsel to ensure that they are in compliance. The text of the FCRA is set forth in full at the Bureau of Consumer Financial Protection's website at www.consumerfinance.gov/learnmore. A list of the sections of the FCRA cross-referenced to the U.S Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The banking and credit union regulators and the CFPB will promulgate guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. The regulations and guidelines issued by the CFPB will be available at www.consumerfinance.gov/learnmore when they are issued. Section 623(e).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers form providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher many not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

The federal banking and credit union regulators and the CFPB will issue regulations that will identify when an information furnisher must investigate a dispute made directly to the furnished by a consumer. Once these regulations are issued, furnishers must comply with them and complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a "credit repair organization." The CFPB regulations will be available at www.consumerfinance.gov. Section 623(a)(8).

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and , if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that complied and maintains files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement

of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charges to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p) must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The Consumer Financial Protection Bureau has prescribed model disclosures, 12 CFR Part 1022, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notification from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623 (a)(6). If a furnisher learns that it had furnished inaccurate information due to identity theft, it must notify each consumer reporting agency of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notifies pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher many not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The Consumer Financial Protection Bureau website, www.consumerfinance.gov/learnmore, has more information about the FCRA.

Appendix N to Part 1022—Notice of User Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

All users of consumer reports must comply with all applicable regulations, including regulations promulgated after this notice was first prescribed in 2004. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations, State law may imposes additional requirements. The text of the FCRA is set forth in full at the Bureau of Consumer Financial Protection's website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Bureau's website. **Users must consult the relevant provisions of the FCRA for details about their obligation under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are;

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)((2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decision, where the consumer has given written permission. Section 604 (a)(3)(B) and 604(b)

- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)

- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)

- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)

- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligation When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Consumer Financial Protection Bureau and the banking and credit union regulators. The Consumer Financial Protection Bureau regulations will be available at www.consumerfinance.gov/learnmore.

F. User Have Obligation When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Consumer Financial Protection Bureau , the Securities and Exchange Commission, and the banking and credit union regulators have issued regulation covering disposal. The Consumer Financial Protection Bureau regulations may be found at www.consumerfinance.gov/learnmore.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulation prescribed by the Consumer Financial Protection Bureau.

Section 609(g) requires a disclosure by all persons that make or arrange loans secures by residential real property (one to four units) and that use credit scores.
These persons must

provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking

company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)

- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the

medical provider). If the information is to be used for insurance transaction, the consumer must give consent to the user of the report of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in regulation issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information to any other person (expect where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstance. Section 603(1), 604(c), 604(E), and 615(d). This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers who meet certain preestablished criteria. If any person intends to use prescreened list, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

  In addition, the Consumer Financial Protection Bureau has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identity of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

Dated: November 29, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

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Part IV

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 208, 225, et al.
Risk-Based Capital Guidelines: Market Risk; Alternatives to Credit Ratings for Debt and Securitization Positions; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2010–0003]

RIN 1557–AC99

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1401]

RIN 7100–AD61

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD70

Risk-Based Capital Guidelines: Market Risk; Alternatives to Credit Ratings for Debt and Securitization Positions

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are seeking comment on an amendment to the notice of proposed rulemaking (NPR) to modify the agencies' market risk capital rules, published in the **Federal Register** on January 11, 2011 (January 2011 NPR). The January 2011 NPR did not include the methodologies adopted by the Basel Committee on Banking Supervision (BCBS) for calculating the standard specific risk capital requirements for certain debt and securitization positions, because the BCBS methodologies generally rely on credit ratings. Under section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), all federal agencies must remove references to and requirements of reliance on credit ratings from their regulations and replace them with appropriate alternatives for evaluating creditworthiness. In this NPR, the agencies are proposing to incorporate into the proposed market risk capital rules certain alternative methodologies for calculating specific risk capital requirements for debt and securitization positions that do not rely on credit ratings. The agencies expect to finalize this proposal, together with the January 2011 NPR, in the coming months after receipt and consideration of comments.

DATES: Comments on this notice of proposed rulemaking must be received by February 3, 2012.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Risk-Based Capital Guidelines: Market Risk'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Select ''Document Type'' of ''Proposed Rules,'' and in ''Enter Keyword or ID Box,'' enter Docket ID ''OCC–2010–0003,'' and click ''Search.'' On ''View By Relevance'' tab at bottom of screen, in the ''Agency'' column, locate the proposed rule for OCC, in the ''Action'' column, click on ''Submit a Comment'' or ''Open Docket Folder'' to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2010–0003'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. 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.

You may review comments and other related materials that pertain to this proposed rule by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Select ''Document Type'' of ''Public Submissions,'' in ''Enter Keyword or ID Box,'' enter Docket ID ''OCC–2010–0003,'' and click ''Search.'' Comments will be listed under ''View By Relevance'' tab at bottom of screen. If comments from more than one agency are listed, the ''Agency'' column will indicate which comments were received by the OCC.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–[1401], 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.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *Email: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AD70.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Risk Expert, (202) 927–4580, Roger Tufts, Senior Economic Advisor, Capital Policy Division, (202) 874–5070; or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Assistant Director, (202) 530–6260, Tom Boemio, Manager, (202) 452–2982, Connie Horsley, Manager, (202) 452–5239, Division of Banking Supervision and Regulation; or April C. Snyder, Senior Counsel, (202) 452–3099, or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, Capital Markets Branch, (202) 898–6705; Ryan Billingsley, Chief (Acting), Policy Section, (202) 898–3797; Karl Reitz, Senior Policy Analyst, (202) 898–6775, Division of Risk Management Supervision; or Mark Handzlik, Counsel, (202) 898–3990; or Michael Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

This NPR amends the January 2011 NPR and solicits public comment on proposed methodologies for calculating the specific risk capital requirements for covered debt and securitization positions under the market risk capital rules. Specific risk relates to changes in the market value of a position due to factors other than general market movements. The proposed methodologies would result in specific risk capital requirements for debt and securitization positions that are generally consistent with the BCBS's market risk framework, which relies on the use of credit ratings. The agencies expect to finalize this proposal, together with the January 2011 NPR, in the coming months after receipt and consideration of comments.

A. January 2011 NPR

The January 2011 NPR requested comment on a proposal to implement various revisions to the market risk framework adopted by the BCBS [1] between July 2005 and June 2010. The revisions would significantly modify the agencies' market risk capital rules [2] to better capture those positions for which application of the market risk capital rules are appropriate, address shortcomings in the modeling of certain risks, address procyclicality concerns, enhance the rules' sensitivity to risks that are not adequately captured under the current regulatory capital measurement methodologies, and increase transparency through enhanced disclosures.[3]

The January 2011 NPR was based on the *International Convergence of Capital Measurement and Capital Standards: A Revised Framework (Basel II or New Accord),*[4] and revisions thereto included in *The Application of Basel II to Trading Activities and the Treatment of Double Default Effects,* published jointly by the International Organization of Securities Commissions and the BCBS in 2005 (2005 revisions),[5] as well as revisions developed by the BCBS and published in three documents in July 2009: *Revisions to the Basel II Market Risk Framework,*[6] *Guidelines for Computing Capital for Incremental Risk in the Trading Book,*[7] *and Enhancements to the Basel II Framework* [8] (collectively, the 2009 revisions). In June 2010, the BCBS published additional revisions to the market risk framework that included establishing a floor on the risk-based capital requirement for modeled correlation trading positions.[9]

Both the 2005 and 2009 revisions include provisions that reference credit ratings. In particular, the 2005 revisions provide for the use of credit ratings to determine the specific risk add-on for a debt position that is a covered position under the standardized measurement method. The 2005 and 2009 revisions also expand the ''government'' category of debt positions to include all sovereign debt and change the specific risk-weighting factor for sovereign debt from zero percent to a range of zero to 12.0 percent based on the credit rating of the obligor and the remaining contractual maturity of the debt position.[10]

The 2009 revisions include changes to the specific risk-weighting factors for rated and unrated securitization positions. For rated securitization positions, the revisions assign a specific risk-weighting factor based on the credit rating of a position, and whether such rating represents a long-term credit rating or a short-term credit rating. In addition, the 2009 revisions provide for the application of higher specific risk-weighting factors to rated re-securitization positions relative to similarly-rated securitization exposures. Under the 2009 revisions, unrated positions were to be deducted from total capital, except when the unrated position was held by a bank [11] that had approval to use the supervisory formula approach to determine the specific risk add-on for the unrated position, when the bank had approval to use an approach that used estimates in line

[1] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[2] 12 CFR Part 3, appendix B (OCC), 12 CFR parts 208 and 225, appendix E (Board), and 12 CFR part 325, appendix C (FDIC).

[3] 76 FR 1890 (Jan. 11, 2011).

[4] *Available at, http://www.bis.org/publ/bcbs107.htm.*

[5] *Available at, http://www.bis.org/publ/bcbs111.htm.*

[6] *Available at, http://www.bis.org/publ/bcbs193.htm.*

[7] *Available at, http://www.bis.org/publ/bcbs159.htm.*

[8] *Available at, http://www.bis.org/publ/bcbs/basel2enh0901.htm.*

[9] The June 2010 revisions can be found in their entirety at *http://www.bis.org/press/p100618/annex.pdf.*

[10] In the context of the market risk capital rules, the specific risk-weighting factor is a scaled measure that is similar to the ''risk weights'' used in the general risk-based capital regulations (*i.e.,* the zero, 20 percent, 50 percent, and 100 percent risk weights) for determining risk-weighted assets. The measure for market risk proposed under the January 2011 NPR is multiplied by 12.5 to convert it to market risk equivalent assets, which are then added to the denominator of the risk-based capital ratio.

[11] For simplicity, and unless otherwise indicated, the preamble to this notice of proposed rulemaking uses the term ''bank'' to include banks and bank holding companies (BHCs). The terms ''bank holding company'' and ''BHC'' refer only to bank holding companies regulated by the Board.

with the quantitative standards under the advanced approaches rule, or when the bank holding the unrated position elected to use the concentration ratio approach to calculate the specific risk add-on. Under *Basel III: A global regulatory framework for more resilient banks and banking systems* (Basel III), published by the BCBS in December 2010, and revised in June 2011, certain items, including certain securitization positions, that had been deducted from total capital are assigned a risk weight of 1,250 percent.

B. Development of Alternative Methodologies

Section 939A of the Act requires federal agencies to remove from their regulations any reference to or requirement of reliance on credit ratings in the assessment of creditworthiness of a security or money market instrument. Section 939A further requires the agencies to substitute in such regulations a standard of creditworthiness that the agencies determine to be appropriate in consideration of the entities regulated by each such agency and the purposes for which such entities would rely on such standards of creditworthiness.

In view of the requirements of section 939A, when publishing the January 2011 NPR, the agencies decided not to propose to implement those aspects of the 2005 and 2009 revisions that rely on the use of credit ratings. Instead, the January 2011 NPR included as a placeholder the treatment under the agencies' current market risk capital rules for determining the specific risk add-ons for debt and securitization positions. The agencies acknowledged the shortcomings of the current treatment and recognized that the treatment would need to be amended in accordance with the requirements of section 939A.

As part of their coordinated effort to implement the requirements of section 939A, on August 25, 2010, the agencies published a joint advance notice of proposed rulemaking (ANPR) [12] seeking comment on alternative creditworthiness standards for those provisions of the agencies' risk-based capital rules that currently reference credit ratings. The agencies received 23 comments on the ANPR from banks, industry and consumer advocacy groups, and individuals.

Most commenters shared a general concern regarding the removal of credit ratings from the risk-based capital rules and asserted that credit ratings can be a valuable tool for assessing creditworthiness. These commenters also stated that any alternative creditworthiness standard used for the purposes of the risk-based capital rules should be risk sensitive so as to not incent banks to engage in regulatory arbitrage.

A number of commenters stated that section 939A permits the use of credit ratings as a supplement to prudent due diligence reviews. Other commenters asserted generally that a legislative change should be enacted that would amend section 939A to permit the agencies to continue using credit ratings in their regulations. These commenters stated that developing a suitable alternative to credit ratings would be impossible without creating undue regulatory burden, which would be particularly acute for community banks. Many commenters expressed concern that a risk-sensitive methodology to replace reliance on credit ratings requiring extensive modeling capabilities would disproportionately burden community and regional banks. According to these commenters, community and regional banks generally do not have the internal systems and staff capable of performing a level of analysis similar to that performed by credit rating agencies, and thus would have to hire third-party vendors.

Some commenters also stated that any alternative could result in inconsistencies with the international capital standards established by the BCBS that could place U.S. banks at a competitive disadvantage relative to non-U.S. banks. Other commenters stated that exclusive reliance on credit ratings is inappropriate, especially for securitization exposures for which measuring risk requires consideration of specific cash flow structures, collateral, and other enhancements.

Following the release of the ANPR, on November 10, 2010, the Board hosted a roundtable discussion attended by staff and principals of the agencies, as well as bankers, academics, asset managers, staff of credit rating organizations, and others to discuss alternative measures of creditworthiness. The roundtable participants reiterated many of the concerns expressed by commenters in response to the joint ANPR.[13]

C. Objectives of the Proposed Revisions

Since the publication of the ANPR and the January 2011 NPR, the agencies have been working to develop appropriate alternative creditworthiness standards to comply with section 939A of the Act. As indicated in the ANPR, the agencies believe that any alternative creditworthiness standard should, to the extent possible:

- Appropriately distinguish the credit risk associated with a particular exposure within an asset class;
- Be sufficiently transparent, unbiased, replicable, and defined to allow banking organizations of varying size and complexity to arrive at the same assessment of creditworthiness for similar exposures and to allow for appropriate supervisory review;
- Provide for the timely and accurate measurement of negative and positive changes in creditworthiness;
- Minimize opportunities for regulatory capital arbitrage;
- Be reasonably simple to implement and not add undue burden on banking organizations; and,
- Foster prudent risk management.

In developing alternative creditworthiness standards in this NPR, the agencies strove to incorporate as many of these features as possible and to establish capital requirements comparable to those published in the 2005 and 2009 revisions to ensure international consistency and competitive equity.

While this NPR concerns the market risk capital rules, the agencies believe that it is important to align the methodologies for calculating specific risk-weighting factors for debt positions and securitization positions in the market risk capital rules with methodologies for assigning risk weights under the agencies' other capital rules. Such alignment would reduce the potential for regulatory arbitrage between rules. Accordingly, the agencies intend to propose, at a later date, to revise their general risk-based capital rules [14] by incorporating creditworthiness standards for debt and securitization positions similar to the standards included in this proposal. Table 1 shows areas in the agencies' current and proposed risk-based capital standards that make reference to credit ratings.

[12] 75 FR 52283 (August 24, 2010).

[13] A detailed summary of the views expressed at the roundtable discussion is available at: *http://www.federalreserve.gov/newsevents/files/credit_ratings_roundtable_20101110.pdf.*

[14] The agencies' general risk-based capital rules are at 12 CFR part 3, Appendix A (OCC); 12 CFR part 208, Appendix A and 12 CFR part 225, Appendix A (Board); and 12 CFR part 325, Appendix A (FDIC).

TABLE 1—REFERENCES TO AND USE OF CREDIT RATINGS UNDER THE AGENCIES' CURRENT CAPITAL RULES AND BCBS STANDARDS

Exposure category	Agencies' capital rules			BCBS standards	
	General risk-based capital rule	Market risk amendment 1996	Advanced approaches rule	Basel II standardized approach	Basel market risk framework
1. Sovereign	.....	X	.....	X	X
2. Multilateral Development Banks	.....	X	.....	X	X
3. Public Sector Entity	.....	X	.....	X	X
4. Bank	.....	.....	.....	X	X
5. Corporate	X[15]	X	.....	X	X
6. Securitization	X	X	X	X	X

II. The Proposed Rule

A. Specific Risk Treatment Under the Agencies' Market Risk Capital Rules

Specific risk relates to changes in the market value of a position due to factors other than general market movements. For example, general market risk arises from changes in the level of interest rates on Treasury securities, from changes in the credit spreads for all borrowers of similar credit quality, and from changes in foreign exchange rates. These general market risk factors affect the value of all positions in a bank's trading account that are driven by changes in interest rates, foreign exchange rates, or equity and commodity prices. In contrast, specific risk refers to factors that apply singularly to an identified position. For example, idiosyncratic credit risk associated with a particular issuer of a debt instrument—which makes the holder of that instrument vulnerable to losses due to the credit quality deterioration of the issuer, or its declaration of bankruptcy—is specific risk.

Under the market risk capital rules, a bank may use an internal model to measure its exposure to specific risk if it has demonstrated to its primary federal supervisor that the model adequately measures the specific risk of its debt and equity positions. If a bank does not model specific risk, it must calculate its specific risk capital requirement, or ''add-on'' using a standardized method.[16] Under this method, the specific risk add-on for debt and securitization positions is calculated by multiplying the absolute value of the current market value of each net long and net short position in a debt instrument by the appropriate specific risk-weighting factor that is specified in the rule. These specific risk-weighting factors range from zero to 8.0 percent and are based on the identity of the obligor and, in the case of some positions, the credit rating and remaining contractual maturity of the position. The specific risk add-on for a derivative instrument is based on the market value of the effective notional amount of the underlying position. A bank may net long and short debt positions (including derivatives) in identical debt issues or indices. A bank may also offset a ''matched'' position in a derivative and its corresponding underlying instrument.

Under the standardized method, the specific risk add-on for equity positions is the sum of the bank's net long and short positions in an equity position, multiplied by a specific risk-weighting factor. A bank may net long and short positions (including derivatives) in identical equity issues or equity indices in the same market. The specific risk add-on is 8.0 percent of the net equity position, unless the bank's portfolio is both liquid and well-diversified, in which case the specific risk add-on is 4.0 percent. For positions that are index contracts comprising a well-diversified portfolio of equities, the specific risk add-on is 2.0 percent of the net long or net short position in the index.

B. Overview of the Proposed Revisions

This rulemaking sets forth methodologies for calculating specific risk capital requirements for debt and securitization positions under the agencies' proposed market risk capital rule that do not include references to credit ratings. To the extent feasible, the agencies have calibrated the capital requirements produced under these methodologies to be broadly consistent with the capital requirements under the Basel standardized measurement method for specific risk. While it is not possible to fully align these capital requirements without referencing credit ratings, the agencies believe that the capital requirements under the proposed methodologies generally would be comparable to those produced by the BCBS's standardized measurement method.

Question 1. The agencies recognize that any measure of creditworthiness likely will involve tradeoffs between more refined differentiation of risk and greater implementation burden. Do the proposed revisions described below strike an appropriate balance between measurement of risk and implementation burden in considering alternative measures of creditworthiness? Are there other alternatives permissible under section 939A of the Act that strike a more appropriate balance?

Together with the new specific risk capital requirements, the agencies have included in this proposal a number of definitions relevant to the specific risk requirements proposed in this NPR.

1. Sovereign Debt Positions

Background

The specific risk-weighting factors for sovereign debt positions in the current market risk capital rules are based on the membership of the sovereign entity in the Organization for Economic Co-operation and Development (OECD). Covered debt positions that are exposures to sovereign entities that are OECD members receive a zero percent specific risk-weighting factor, whereas exposures to sovereign entities that are non-OECD members receive an 8.0 percent specific risk-weighting factor. The general risk-based capital rules assign risk weights to credit exposures using the same OECD/non-OECD distinction. Under the 2005 revisions, sovereign positions would be assigned specific risk-weighting factors based on a given sovereign's external credit rating.

[15] Credit ratings are used in the determination of whether a securities firm is deemed a qualified securities firm for purposes of the general risk-based capital rule.

[16] *See* section 5(c) of the agencies' market risk capital rules for a description of this method. 12 CFR part 3, appendix B, section 5(c) (OCC); 12 CFR parts 208 and 225, appendix E, section 5(c) (Board); 12 CFR part 325, appendix C, section 5(c) (FDIC).

Table 2 provides the specific risk-weighting factors for sovereign debt positions under the 2005 revisions.

TABLE 2—BCBS SPECIFIC RISKWEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS UNDER THE 2005 REVISIONS

External credit rating	Remaining contractual maturity	Specific risk-weighting factor (in percent)
Highest investment grade to second highest investment grade (for example, AAA to AA−).		0.00
Third highest investment grade to lowest investment grade (for example, A+ to BBB−).	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 and up to and including 24 months.	1.00
	Residual term to final maturity exceeding 24 months	1.60
One category below investment grade to two categories below investment grade (for example, BB+ to B−).		8.00
More than two categories below investment grade		12.00
Unrated		8.00

Proposed Approach to Sovereign Debt Positions

Under this NPR, ''sovereign debt position'' would be defined as a direct exposure to a sovereign entity. Consistent with the January 2011 proposal, sovereign entity is defined as a central government or an agency, department, ministry, or central bank of a central government. A sovereign entity would not include commercial enterprises owned by the central government that are engaged in activities involving trade, commerce, or profit, which are generally conducted or performed in the private sector.

The agencies are proposing that a bank determine its specific risk-weighting factors for sovereign debt positions based on OECD Country Risk Classifications (CRCs).[17] The OECD's CRCs are used for transactions covered by the OECD arrangement on export credits in order to provide a basis under the arrangement for participating countries to calculate the premium interest rate to be charged to cover the risk of non-repayment of export credits.

The agencies believe that use of CRCs in the proposal is permissible under section 939A of the Dodd-Frank Act. Section 939A is part of Subtitle C of Title IX of the Dodd-Frank Act, which, among other things, enhances regulation by the U.S. Securities and Exchange Commission (SEC) of credit rating agencies, including Nationally Recognized Statistical Rating Organizations (NRSROs) registered with the SEC, and removes references to credit ratings and NRSROs from federal statutes. In the introductory ''findings'' section to Subtitle C, which is entitled ''Improvements to the Regulation of Credit Ratings Agencies,'' Congress characterized credit rating agencies as organizations that play a critical ''gatekeeper'' role in the debt markets and perform evaluative and analytical services on behalf of clients, and whose activities are fundamentally commercial in character.[18] Furthermore, the legislative history of section 939A focuses on the conflicts of interest of credit rating agencies in providing credit ratings to their clients, and the problem of government ''sanctioning'' of the credit rating agencies' credit ratings by having them incorporated into federal regulation.

The agencies believe that section 939A was not intended to apply to assessments of creditworthiness of organizations such as the OECD. The OECD is not subject to the sorts of conflicts of interest that affected NRSROs because the OECD is not a commercial entity that produces credit assessments for fee-paying clients, nor does it provide the sort of evaluative and analytical services as credit rating agencies. Additionally, the agencies note that the use of the CRCs is limited in the proposal and that the agencies are considering additional measures that could supplement the CRCs to determine risk-weighting factors for sovereign debt positions.

Question 2: The agencies solicit comment on the use of the CRC ratings to assign specific risk-weighting factors to sovereign debt positions.

The CRC methodology is used by the OECD to assess country credit risk. CRCs are produced generally for the purpose of setting minimum premium rates for transactions covered by the OECD's Export Credit Arrangement. The CRC methodology was established in 1999 and classifies countries into categories based on the application of two basic components: the country risk assessment model (CRAM), which is an econometric model that produces a quantitative assessment of country credit risk; and the qualitative assessment of the CRAM results, which integrates political risk and other risk factors not fully captured by the CRAM. The two components of the CRC methodology are combined and result in countries being classified into one of eight risk categories (0–7), with countries assigned to the 0 category having the lowest possible risk assessment and countries assigned to the 7 category having the highest.

The agencies consider CRCs to be a reasonable alternative to credit ratings and to be more granular than the current treatment based on OECD membership. The OECD regularly updates CRCs for over 150 countries. Also, CRCs are recognized by the BCBS as an alternative to credit ratings.[19]

However, the agencies recognize that CRCs have certain limitations. While the OECD has published a general description of the methodology for CRC determinations, the methodology is largely principles-based and does not provide details regarding the specific information and data considered to support a CRC. Also, OECD-member sovereigns that are defined to be ''high-income countries'' by the World Bank are assigned a CRC of zero, the most favorable classification.[20] As such, a CRC classification may not accurately reflect a high income OECD country's relative risk of default. Additionally, while the OECD reviews qualitative

[17] Please refer to *http://www.oecd.org/document/49/0,3343,en_2649_34169_1901105_1_1_1_1,00.html* for more information on the OECD country risk classification methodology.

[18] *See* Public Law 111–203, section 931.

[19] New Accord at paragraph 55.

[20] OECD, premium related conditions: Explanation of the premium rules of the arrangement on officially supported export credits (the Knaepen Package), 06, July–2004, p. 3, n5.

factors for each sovereign on a monthly basis, quantitative financial and economic information used to assign CRCs is available only annually in some cases, and payment performance is updated quarterly. The agencies are concerned that, in some cases, the CRC may misclassify risks for purposes of assessing risk-based capital requirements, particularly where sovereign debt restructuring has occurred. In such cases, the CRC appears to assess the risk associated with the sovereign's payment of the restructured debt and may not fully reflect the credit event associated with the restructuring.

To alleviate concerns about potential misclassifications, the agencies are proposing to apply a specific risk-weighting factor of 12.0 percent to sovereign debt positions where the sovereign has defaulted on any exposure during the previous five years. The proposed rule would define a default by a sovereign as noncompliance by a sovereign entity with its external debt service obligations or the inability or unwillingness of a sovereign entity to service an existing obligation according to its terms, as evidenced by failure to make full and timely payments of principal and interest, arrearages, or restructuring. A default would include a voluntary or involuntary restructuring that results in a sovereign entity not servicing an existing obligation in accordance with the obligation's original terms.

For purposes of the proposed rule, the agencies assigned specific risk-weighting factors to CRCs in a manner consistent with the assignment of risk weights to CRCs under the Basel II standardized framework, as set forth in table 3.

TABLE 3—MAPPING OF CRC TO RISK WEIGHTS UNDER THE BASEL ACCORD

CRC classification	Risk weight (in percent)
0–1	0
2	20
3	50
4 to 6	100
7	150
No classification assigned	100

Similar to the 2005 revisions, the proposed specific risk-weighting factors for sovereign debt positions would range from zero percent for those assigned a CRC of 0 or 1 to 12.0 percent for a sovereign position assigned a CRC of 7. Also similar to the 2005 revisions, the specific risk-weighting factor for certain sovereigns that are deemed to be low credit risk based on their CRC would vary depending on the remaining maturity of the position. The proposed specific risk-weighting factors for sovereign debt positions are shown in Table 4.

TABLE 4—PROPOSED SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

Sovereign CRC	Specific risk-weighting factor (in percent)	
0–1	0.0	
2–3	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 and up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6
4–6	8.0	
7	12.0	
No CRC	8.0	

As under the general risk-based capital rules, a bank may assign to a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in Table 4 if the position is denominated in the sovereign entity's currency, the bank has at least an equivalent amount of liabilities in that currency, and the sovereign entity allows banks under its jurisdiction to assign the lower specific risk-weighting factor to the same position.

The agencies have included exceptions to this general approach. For instance, sovereign debt positions that are exposures to the United States government and its agencies always would be treated as having a CRC of zero, and sovereign debt positions of sovereign entities that have no CRC generally would be assigned an 8.0 percent specific risk-weighting factor.

Alternative Market-based Approaches for Sovereign Debt Positions

In developing the proposed rule, the agencies considered a range of financial and market-based alternatives to the use of credit ratings, either as a replacement for or to supplement the use of CRCs. Two possible market-based indicators are sovereign credit default swap (CDS) spreads, or bond spreads. Both of these market-based indicators could be more ''forward looking'' than indicators based on historical information, and, under such an approach, banks would assign specific risk-weighting factors based on whether the CRC or the spread methodology indicated a higher capital requirement. Use of these market-based indicators along with CRCs could also improve overall accuracy in assignment of specific risk-weighting factors, especially for certain high-income OECD countries.

Credit default swap spreads for a given sovereign could be used to assign specific risk-weighting factors, with higher CDS spreads resulting in assignments of higher specific risk-weighting factors. The presumption is that CDS spreads will reflect market perception of a sovereign's default risk. To make such an approach practicable, the agencies would need to implement a methodology that mitigates concerns regarding volatility and information content of CDS spreads. For instance, the agencies could require use of five-year CDS premiums, which are the most liquid contracts traded and are generally considered the most widely-recognized benchmark in this context. To limit volatility concerns, the CDS spread could be calculated as a one-year, rolling daily average of a sovereign's CDS premium. To focus on country-specific levels of risk premiums, the agencies could subtract a designated

base rate, for example, 50 basis points, which is based on the long-term historical average of United States CDS spreads. Table 5 illustrates how CDS spreads and CRCs could be used together to assign specific risk-weighting factors. In order to have an approach that uses CDS spreads and CRCs, a position's specific risk-weighting factor would be based on the higher of the specific risk-weighting factors required by the sovereign's CRC rating and its CDS spread from table 5. To illustrate this approach, assume a sovereign is assigned a zero CRC rating and the one year average of the five-year CDS spread of the sovereign is 150 basis points above the base rate. Since the specific risk-weighting factor assigned to the CDS spread is higher than the specific risk-weighting factor assigned to the CRC rating, the applicable risk-weighting factor for positions that are exposures to that sovereign would be based on the CDS spread, or 4.0 percent.

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS USING CDS SPREADS AND CRCS

Range of the one-year average of the five-year CDS spread above a 50 basis point spread	CRC	Specific risk-weighting factor (in percent) for
0–100 basis points	0–2	0.0
Greater than 100 to 250 basis points	3	4.0
Greater than 250 to 500 basis points	4–6	8.0
Greater than 500 basis points	7	12.0

Sovereign bond spreads could also be used to assign specific risk-weighting factors, with higher bond credit spreads for a given sovereign resulting in higher risk specific risk-weighting factors, similar to the methodology described above for CDS spreads. As with CDS spreads, the presumption is that sovereign bond credit spreads reflect market expectations of default risk. However, in order to use bond credit spreads, the agencies would need to address certain challenges. For example, sovereign bonds usually are denominated in the currency of the country of issuance and spreads that are calculated from sovereign bond yields in different currencies would reflect factors other than credit risk, such as the sovereign's inflation rate and its currency's exchange rate with other currencies. Therefore, it would be difficult to determine what portion of a sovereign's total bond spread reflects credit risk. As a result, it also would be difficult to compare the relative likelihood of default among sovereign debt positions.

A possible solution could be to use only bonds denominated in U.S. dollars, and perhaps one or two other major currencies as base currencies. Under such an approach, a ''base'' obligation with relatively low credit risk (in the case of U.S. dollar-denominated notes, a U.S. Treasury bond) would be identified and the spread between that obligation and that of bonds issued by other sovereign entities in the same currency with similar remaining maturity would be used to assign the specific risk-weighting factor. A similar process could be used for bonds denominated in euros, with the issuance of a particular sovereign entity deemed low credit risk based on a certain period of market history providing the ''base'' rate to which other euro-denominated bonds of similar remaining maturity would be compared in order to determine the specific risk-weighting factor for those obligations.

Such an approach may be limited in scope as many sovereign entities either do not issue bonds in currencies other than their own, or issue very small amounts. For instance, approximately 70 countries have some U.S. dollar-denominated debt outstanding, but such issuances are usually infrequent and small in dollar volume. Issuances of euro- and yen-denominated bonds are much less frequent than those of dollar-denominated bonds. In addition, some of the problems involved in incorporating a methodology based on CDS spreads could also be relevant to a bond spread methodology.

Question 3: How well does the proposed methodology assign specific risk-weighting factors to sovereign debt positions that are commensurate with the relative risk of such exposures? How could it be improved? What are the relative merits of the two market-based alternatives described above (using sovereign CDS spreads and bond spreads) as supplements to the CRC ratings?

2. Exposures to Certain Supranational Entities and Multilateral Development Banks

Under the agencies' current market risk capital rules, debt positions that are exposures to certain supranational entities and multilateral development banks (MDBs) receive specific risk-weighting factors that range between 0.25 percent and 1.6 percent, depending on their remaining maturity. Under the Basel market risk framework, as revised, these positions continue to receive the same treatment as in the agencies' current market risk capital rules.

The proposed rule defines an MDB to include the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the bank's primary federal supervisor determines poses comparable credit risk.

Consistent with the treatment of exposures to supranational entities under the New Accord, the agencies are proposing to assign a zero percent specific risk-weighting factor to debt positions that are exposures to the Bank for International Settlements, the European Central Bank, the European Commission, and the International Monetary Fund.

Generally consistent with the Basel framework, the agencies also are proposing to apply a zero percent specific risk-weighting factor to debt positions that are exposures to MDBs, as defined in the proposed rule. This treatment is based on these MDBs' generally high-credit quality, strong shareholder support, and a shareholder structure comprised of a significant proportion of sovereign entities with strong creditworthiness.

Debt positions that are exposures to other regional development banks and multilateral lending institutions that do not meet these requirements would generally be treated as corporate debt positions and would be subject to the proposed methodology, as described below.

3. Exposures to Government Sponsored Entities

Under the current market risk capital rules, debt positions that are exposures to government sponsored entities (GSEs) [21] are assigned specific risk-weighting factors ranging from 0.25 percent to 1.6 percent, depending on maturity. For the purposes of this proposal, a GSE would be defined as an agency or corporation originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. In this proposal, and consistent with the treatment of these positions in the current market risk capital rules, the agencies propose to apply specific risk-weighting factors ranging from 0.25 percent to 1.6 percent to debt positions that are exposures to GSEs based on the remaining maturity of the position. GSE equity exposures, including preferred stock, would be assigned a specific risk-weighting factor of 8.0 percent.

4. Debt Positions That Are Exposures to Depository Institutions, Foreign Banks, and Credit Unions

Under the current market risk capital rules, debt positions that are exposures to banks incorporated in OECD countries generally are assigned a specific risk-weighting factor ranging from 0.25 percent to 1.6 percent based on remaining maturity of the position. Banks that are not incorporated in an OECD country are assigned similar specific risk-weighting factors if certain conditions are met, including the presence of an investment-grade rating from a credit rating agency or assessments of comparable credit quality by the investing bank. Higher specific risk-weighting factors are assigned to positions that are rated below investment grade or deemed to be of comparable credit quality. The Basel market risk framework also makes use of credit ratings to assign specific risk-weighting factors to these positions.

This proposal would eliminate the distinction based on OECD membership for the purpose of the market risk capital rules and instead apply specific risk-weighting factors to debt positions that are exposures to depository institutions,[22] foreign banks, or credit unions [23] based on the applicable specific risk-weighting factor of the entity's sovereign of incorporation, as shown in Table 6. For example, debt positions that are exposure to a bank incorporated in a country with a CRC of 1 would be assigned a specific risk-weighting factor ranging from 0.25 percent to 1.6 percent depending on the remaining maturity of the position. For purposes of this proposal, sovereign of incorporation means the country where an entity is incorporated, chartered, or similarly established. If an entity's sovereign of incorporation is assigned to the 8.0 percent specific risk-weighting factor because of a lack of CRC rating, then the debt position that is an exposure to that entity would also be assigned an 8.0 percent specific risk-weighting factor.

TABLE 6—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTION, FOREIGN BANK, AND CREDIT UNION DEBT POSITIONS

CRC of sovereign of incorporation	Specific risk-weighting factor (in percent)	
0–2	Residual term to final maturity 6 months or less	0.25
	Residual term to maturity up to and including 24 months	1.0
Residual term to final maturity exceeding 24 months	1.6.	
3	8.0	
4–7	12.0	
No CRC	8.0	

Consistent with the general risk-based capital rules, debt positions that are exposures to a depository institution or foreign bank that are includable in the regulatory capital of that entity, but that are not subject to deduction as a reciprocal holding would be assigned a specific risk-weighting factor of at least 8.0 percent.[24]

Question 4: How well does the proposed methodology assign specific risk-weighting factors that are commensurate with the relative risk of positions that are exposures to depository institutions, foreign banks, and credit unions?

5. Exposures to Public Sector Entities (PSEs)

The agencies' current market risk capital rules assign specific risk-weighting factors to general obligations of states and other political subdivisions of OECD countries that range from 0.25 percent to 1.6 percent based on maturity.[25] Positions that are revenue obligations of states and other political subdivisions of OECD countries are treated in the same manner if certain conditions are met. These conditions include the presence of an investment grade rating or an assessment of comparable credit quality by the bank holding the covered position. The 2005 revisions to the Basel market risk framework use credit ratings to assign specific risk-weighting factors.

The proposed rule defines a PSE as a state, local authority, or other

[21] These agencies include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, and the Federal Home Loan Bank System.

[22] A depository institution is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2), other than a depository institution.

[23] Under this proposal, a credit union is defined as an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752).

[24] 12 CFR part 3, Appendix A, section 2(c)(6)(ii) (OCC); 12 CFR parts 208 and 225, Appendix A, section II.B.3 (FRB); 12 CFR part 325, Appendix A, I.B.(4) (FDIC).

[25] Political subdivisions include a state, county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity that is an instrument of a state or municipal corporation.

governmental subdivision below the level of a sovereign entity. This definition does not include commercial companies owned by a government that engage in activities involving trade, commerce, or profit, which are generally conducted or performed in the private sector. The agencies propose that the specific risk-weighting factor assigned to a debt position that is an exposure to a PSE be based on the CRC assigned to the country of incorporation of the PSE, as well as whether the position is a general obligation or a revenue obligation of the PSE. This methodology is similar to the approach under the Basel II standardized approach for credit risk, which allows a bank to assign a risk weight to PSEs based on the credit rating of the sovereign of incorporation of the PSE.

A general obligation is defined as a bond or similar obligation that is guaranteed by the full faith and credit of states or other political subdivisions of a sovereign entity. Revenue obligation is defined as a bond or similar obligation that is an obligation of a state or other political subdivision of a sovereign entity, but which the government entity is committed to repay with revenues from a specific project financed rather than with general tax funds.

For example, two debt positions with a remaining maturity exceeding 24 months that are exposures to the same PSE—one a general obligation and the other a revenue obligation—would be assigned different specific risk-weighting factors as follows: if the sovereign of incorporation has a CRC of 2, the general obligation debt position would receive a 1.6 percent specific risk-weighting factor, and the revenue obligation debt position would receive a 8.0 percent specific risk-weighting factor. If a PSE's sovereign of incorporation was assigned to the 8.0 percent specific risk-weighting factor due to a lack of a CRC, then a debt position that is an exposure to that PSE also would be assigned an 8.0 percent specific risk-weighting factor.

The specific risk-weighting factors for debt positions that are general obligations and revenue obligations of PSEs, based on the PSE's country of incorporation, are shown in Tables 7 and 8, respectively.

TABLE 7—SPECIFIC RISK-WEIGHTING FACTORS FOR GENERAL OBLIGATION DEBT POSITIONS IN PSES

Sovereign CRC rating	General obligation claims risk-weighting factor (in percent)	
0–2	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 and up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6
3	8.0	
4–7	12.0	
No CRC	8.0	

TABLE 8—SPECIFIC RISK-WEIGHTING FACTORS FOR REVENUE OBLIGATION COVERED POSITIONS IN PSES

Sovereign CRC rating	Revenue obligation risk-weighting factor (in percent)	
0–1	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 and up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6
2–3	8.0	
4–7	12.0	
No CRC	8.0	

In certain cases, the agencies have allowed a bank to use specific risk-weighting factors assigned by a foreign banking supervisor to debt positions that are exposures to PSEs in that supervisor's home country. Therefore, the agencies propose to allow a bank to assign a specific risk-weighting factor to a debt position that is an exposure to a foreign PSE according to the specific risk-weighting factor that the foreign banking supervisor assigns. In no event, however, may the specific risk-weighting factor for such a position be lower than the lowest specific risk-weighting factor assigned to that PSE's sovereign of incorporation.

Question 5: How well does this method of assigning specific risk-weighting factors to positions that are exposures to PSEs do so in a manner that is consistent and commensurate with the relative risk of such exposures? How could it be improved?

6. Corporate Debt Positions

Background

The current market risk capital rules specific risk-weighting factors for debt and securitization positions are based on the BCBS's 1996 market risk framework. Under the current rules, capital requirements are a function of the type of obligor, the credit rating of the obligor, and the remaining maturity of the exposure (see Table 9).

TABLE 9—SPECIFIC RISK—WEIGHTING FACTORS FOR COVERED CORPORATE DEBT POSITIONS UNDER THE AGENCIES' MARKET RISK CAPITAL RULES

Category	Remaining maturity (contractual)	Specific risk-weighting factor (in percent)
Qualifying [1]	6 months or less	0.25
	Over 6 months to 24 months	1.00
Other [2]	Over 24 months	1.60
	N/A	8.00

[1] The ''qualifying'' category includes debt instruments that are: (1) Rated investment grade by at least two nationally recognized credit rating services; (2) rated investment grade by one nationally recognized credit rating agency and not rated less than investment grade by any other credit rating agency; or (3) unrated, but deemed to be of comparable investment quality by the reporting bank and the issuer has instruments listed on a recognized stock exchange, subject to supervisory review.

[2] The ''other'' category includes debt instruments that are not included in the government or qualifying categories.

Under the agencies' general risk-based capital rules, exposures to companies, generally are assigned to the 100 percent risk weight category. A 20 percent risk weight is assigned to bank claims on, or guaranteed by, a securities firm incorporated in an OECD country, that satisfy certain conditions.[26]

The 2005 revisions to the BCBS market risk framework change the standardized measurement method for calculating specific risk add-ons for debt positions. Among the changes, the specific risk-weighting factor for debt positions rated more than two categories below investment grade increased from 8.0 percent to 12.0 percent (see Table 10).

TABLE 10—BCBS 2005 SPECIFIC RISK-WEIGHTING FACTORS FOR CORPORATE DEBT POSITIONS

External credit rating	Remaining contractual maturity	Specific risk-weighting factor (in percent)
Qualifying [1]	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 and up to and including 24 months.	1.00
	Residual term to final maturity exceeding 24 months	1.60
One category below investment grade to two categories below investment grade (for example, BB+ to B-), or equivalent based on a bank's internal ratings.		8.00
More than two categories below investment grade, or equivalent based on a bank's internal ratings.		12.00
Unrated		8.00

[1] Under the 2005 revisions, the qualifying category includes non-sovereign debt positions that are: (i) Rated investment grade by at least two credit rating agencies specified by national authority; or (ii) rated investment grade by one credit rating agency and not rated less than investment grade by any other credit rating agency specified by national authority (subject to supervisory oversight); or (iii) subject to supervisory approval, unrated, but deemed to be of comparable investment quality by the reporting bank, and the issuer has securities listed on a recognized stock exchange.

Overview of Proposed Methodology for Corporate Debt Positions

In this NPR, the agencies propose to permit a bank to use a methodology that uses market-based information and historical accounting information (indicator-based methodology) to assign specific risk-weighting factors to corporate debt positions that are exposures to a publicly-traded entity that is not a financial institution, and to assign a specific risk-weighting factor of 8.0 percent to all other corporate debt positions excluding those that are exposures to a depository institution, foreign bank, or credit union, which are addressed above. The agencies propose to categorize financial institutions separately from other entities because of the differences in their balance sheet structures. As a simple alternative, a bank may assign an 8.0 percent specific risk-weighting factor to all of its corporate debt positions.

The proposal would define a ''corporate debt position'' to mean a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank, a depository institution, a foreign bank, a credit union, a PSE, a GSE, or a securitization. As discussed above, the entities scoped out of the definition of corporate debt positions would receive different treatment under the proposal.

The proposal includes the following definition of ''financial institution'' to distinguish between companies that are primarily engaged in financial activities and those that are not. Under the proposal, a financial institution would be defined as:

(1) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(2) A private fund as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. 80–b–2(a)); except for small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or a private fund designed primarily to promote the public welfare, of the type permitted under section 24 (Eleventh) of the National Bank Act (12 U.S.C. 24 (Eleventh)) and 12 CFR part 24;

(3) An employee benefit plan as defined in paragraphs (3) and (32) of

[26] *See* 12 CFR part 3, appendix A, section 3(2)(xiii) (OCC); 12 CFR parts 208 and 225, appendix A, section III.C.2 (Board), 12 CFR part 325, appendix A, section II.C, Category 2–20 Percent Risk Weight (FDIC).

section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(4) A bank holding company, depository institution, foreign bank, credit union, insurance company, or a securities firm, other than an entity selected as a Community Development Financial Institution (CDFI) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805;

(5) Any other company predominantly engaged in activities that are (i) in the business of banking under section 24 (Seventh) of the National Bank Act (12 U.S.C. 24), or (ii) in activities that are financial in nature under section 4(k) of the Bank Holding Company of 1956 (12 U.S.C. 1843(k)) as of the date this subpart becomes effective (collectively, ''financial activities''); provided that, if the company is not an affiliate of the bank calculating its capital requirements under the proposed rule, then the bank may exclude activities set forth on Schedule A when determining whether the company is predominantly engaged in financial activities.

(6) Any non-U.S. entity that would be covered by any of paragraphs (1) through (5) if such entity was organized in the United States; or

(7) Any other company that an agency may determine is a financial institution based on the nature and scope of its activities.

(8) For the purposes of the proposed rule, a company would be ''predominantly engaged'' in financial activities, if:

(i) 85 percent or more of the total consolidated annual gross revenues (as determined in accordance with applicable accounting standards) of the company in either of the two most recent calendar years were derived, directly or indirectly, by the company on a consolidated basis from financial activities; or

(ii) 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of either of the two most recent calendar years were related to financial activities.

For the purpose of determining whether a company is predominantly engaged in financial activities under the proposed definition, the agencies have determined that certain financial activities may be excluded for determination regarding companies that are not affiliates of the bank. These activities are listed in Schedule A in the NPR. For purposes of the definition of financial institution, the agencies propose to define affiliate with respect to a bank to mean any company that controls, is controlled by, or is under common control with, the bank.

Question 6: The agencies seek comment on the proposed definition of ''financial institution.'' The agencies have sought to achieve consistency in the definition of financial institution with similar definitions proposed for other regulations.[27] *In particular, the agencies have incorporated the standard for ''predominantly engaged'' in financial activities similar to the standard from the Board's proposed rule to define ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Act.*[28] *The agencies seek comment on the appropriateness of this standard for purposes of the proposed rule and whether a different threshold, such as greater than 50 percent, would be more appropriate. Responses should provide detailed explanations.*

Methodology for Positions That Are Exposures to Publicly-Traded, Non-Financial Corporate Entities

To use the proposed indicator-based methodology, a bank must calculate the following: (1) Leverage, measured by the ratio of total liabilities (DEBT) to the market value of assets (A); (2) cash flow, measured as the ratio of earnings before interest expense, taxes, depreciation and amortization (EBITDA) to a market value of assets; and (3) monthly stock return volatility (VOL). In order to assign a corporate debt position a specific risk-weighting factor using the indicator-based methodology, a bank would be required to use publicly available financial data to calculate a value for each of the three indicators. Separate calculations would be made for each quarterly regulatory financial report. The calculation of debt would be based on liabilities reported as of the end of the most recent calendar quarter. Assets would be measured as the sum of the product of the number of outstanding shares as of the end of the most recent calendar quarter multiplied by the entity's stock price on the last trading day of the most recent calendar quarter plus the measure of liabilities reported as of the end of the most recent calendar quarter. To calculate EBITDA for the three-indicator methodology, a bank would use EBITDA for the four most recent calendar quarters. The EBITDA-to-assets ratio would be calculated by dividing an entity's cumulative EBITDA over the previous four quarters by its equity market value plus total liabilities as reported as of the end of the most recent quarter. So, for example, when measuring EBITDA on March 31, 2012, the bank likely would use EBITDA for the period from January 1, 2011, to December 31, 2011. Stock return volatility would be measured as the standard deviation of the corporate obligor's monthly stock return as of the last trading day of each month over the immediate preceding 12 months. So, for example, stock return volatility measured as of March 31, 2012, would be based on the entity's stock returns calculated using prices as of the last trading day of the months of March 2011 to March 2012, adjusted for stock splits.

After calculating the three indicators, a bank would assign the debt position that is an exposure to a publicly traded, non-financial institution to a specific risk-weighting factor using table 11. Similar to the current market risk capital rules and the 2005 revisions, certain high-credit-quality debt positions would be assigned a specific risk-weighting factor based on the residual maturity of the debt as shown in tables 11 and 11A.

TABLE 11—SPECIFIC RISK-WEIGHTING FACTORS FOR NON-FINANCIAL PUBLICLY-TRADED CORPORATE DEBT POSITIONS

EBITDA-to-assets ratio	Stock return volatility measure	Specific risk-weighting factor (in percent)		
		Debt-to-assets ratio less than 0.2	Debt-to-assets ratio between 0.2 and 0.5	Debt-to-assets ratio greater than 0.5
Greater than zero	less than 0.1	(1)	8.0	8.0
	between 0.1 and 0.15	8.0	8.0	8.0

[27] *See* the definition of ''financial end user'' in the proposed rule to implement provisions of the Dodd-Frank Act regarding margin and capital requirements for certain swap entities. 76 FR 27564 (May 11, 2011).

[28] *See* 76 FR 7731 (February 11, 2011).

TABLE 11—SPECIFIC RISK-WEIGHTING FACTORS FOR NON-FINANCIAL PUBLICLY-TRADED CORPORATE DEBT POSITIONS—Continued

EBITDA-to-assets ratio	Stock return volatility measure	Specific risk-weighting factor (in percent)		
		Debt-to-assets ratio less than 0.2	Debt-to-assets ratio between 0.2 and 0.5	Debt-to-assets ratio greater than 0.5
Less than zero	greater than 0.15	8.0	8.0	12.0
	less than 0.1	8.0	8.0	8.0
	between 0.1 and 0.15	8.0	8.0	12.0
	greater than 0.15	12.0	12.0	12.0

[1] See Table 11A.

TABLE 11A—SPECIFIC RISK-WEIGHTING FACTORS NON-FINANCIAL PUBLICLY TRADED COMPANY DEBT POSITIONS

Remaining contractual maturity	Specific risk-weighting factor (in percent)
Residual term to final maturity 6 months or less	0.25
Residual term to final maturity greater than 6 months and up to and including 24 months	1.0
Residual term to final maturity exceeding 24 months	1.6

These three indicators represent market-based information and historical accounting data found in both industry practice and academic literature for estimating the likelihood of default. In calibrating specific risk-weighting factors using these three indicators, the agencies tried to balance the trade-offs between enhanced risk sensitivity and relative simplicity and ease of use. The three indicators chosen were found to yield relatively comparable results in terms of credit risk differentiation to alternative approaches the agencies considered that incorporate more indicators, including the Altman Z Score approach.[29] The agencies note that because the three-indicator methodology uses point in time financial information, results using the three indicator methodology could be cyclical.

Because the universe of public companies is significantly greater than the universe of entities that have issued public debt or that themselves are rated by the credit rating agencies, the three indicators are expected to cover more firms than an approach that relies on credit ratings. The agencies propose to permit banks to use the three indicator-methodology only for public-traded companies because private companies do not have the market data which is a critical input for this methodology.

The agencies are proposing that the three measures would be used to separate debt positions that are exposures to public companies that are not financial institutions into three risk buckets that roughly approximate credit ratings of AAA to A, BBB to BB, and below BB. The limited granularity proposed under this methodology is intended to address limitations in the ability of the methodology to distinguish among high investment grade ratings and possible misspecification of risks between investment grade and non-investment grade ratings of ''BBB'' and ''BB.''

Question 7: What operational challenges, if any, would banks face in implementing the three-indicator methodology?

Question 8: How well does this methodology capture credit risk for purposes of assigning risk-based capital requirements for covered debt positions of publicly-traded companies that are not financial institutions? How could it be improved? Financial institution debt positions

The agencies evaluated a number of alternatives to credit ratings for assigning specific risk-weighting factors to debt positions that are exposures to financial institutions. These alternatives include a multi-indicator methodology similar to the methodology proposed for public companies that are not financial institutions, a bond credit spread methodology described further below, and a methodology based on a notice of proposed rulemaking [30] and related guidance [31] issued by the OCC on November 29, 2011 (collectively, OCC NPR), to revise the definition of ''investment grade'' as it is used in the OCC's investment securities regulations.

Each of these alternatives was viewed as either having significant drawbacks or as not being sufficiently developed to propose them within this NPR. In evaluating whether to propose a multi-indicator methodology to distinguish risk for financial institutions, the agencies note that many financial ratios (such as debt-to-equity) vary significantly among financial industry sub-sectors, such as insurance companies, brokerage firms, and finance companies. Therefore, a ratio-based methodology for all financial institutions might not be feasible for comparing relative risk.

Given the concerns above, the agencies are proposing that all corporate debt positions issued by financial institutions be assigned a specific risk-weighting factor of 8.0 percent. The agencies intend to continue working to develop and evaluate alternative methodologies to the use of credit ratings for financial institution debt positions.

Alternative Approach—Bond Spreads

The agencies considered using bond spreads as an alternative to using credit ratings for assigning capital requirements to both financial and non-financial corporate debt positions. Similar to the three-indicator methodology, an approach that uses bond credit spreads would be market-based and forward-looking. Unlike the three-indicator approach, however, a bond spread approach could be particularly useful for assigning specific risk-weighting factors to financial institutions since, as noted earlier, many

[29] The Altman Z Score and subsequently developed variants use multiple corporate income and balance sheet values, including market value of equity, to predict default probability for a specific corporation.

[30] 76 FR 73526 (Nov. 29, 2011).

[31] 76 FR 73777 (Nov. 29, 2011).

financial ratios (such as debt-to-equity) vary significantly between financial industry sub-sectors, and therefore are not necessarily useful for comparing relative risk. However, because bond markets can sometimes misprice risk and reflect factors other than credit risk, the specific risk-weighting factors determined by this approach may not always be reliable. Additionally, because bond spreads can vary a great deal over short time periods, this approach may introduce undue volatility into the risk-based capital requirements.

To implement a bond spread-based approach, the agencies could assign corporate debt positions to the same general categories of ''high risk,'' ''medium risk,'' or ''low risk,'' depending on whether the spread on the particular position is priced above or below certain market-based thresholds. Specifically, one could compare the one-year average of the spreads of a financial institution's closest to five-year, senior unsecured bond, to the one-year averages of two credit default swap indices, such as the five year CDX.NA.IG.FIN index [32] and the five-year CDX.NA.HY.B index.[33] This methodology could mitigate some of the concerns mentioned above, by explicitly evaluating risk on a *relative* basis and smoothing volatility by using one-year averages.

Specific risk-weighing factors could then be assigned to corporate debt positions that are exposures to public companies that are financial institutions as shown in Table 12:

TABLE 12—SPECIFIC RISK-WEIGHTING FACTORS USING CORPORATE BOND SPREADS

	Risk characterization	Possible specific risk-weighting factor (in percent)
average spread < CDX.NA.IG.FIN	''low risk''	4.0
CDX.NA.IG.FIN ≤ average spread < CDX.NA.HY.B	''medium risk''	8.0
average spread ≥ CDX.NA.HY.B	''high risk''	12.0

Specific risk-weighting factors could be assigned to corporate debt positions that are exposures to public companies that are not financial institutions as follows:

TABLE 12A—SPECIFIC RISK-WEIGHTING FACTORS USING CORPORATE BOND SPREADS

	Risk characterization	Possible specific risk weight (in percent)
average spread < CDX.NA.IG [34]	''low risk''	4.0
CDX.IG ≤ average spread < CDX.NA.HY.B	''medium risk''	8.0
average spread ≥ CDX.NA.HY.B	''high risk''	12.0

The agencies believe that the ''low risk'' characterization would roughly correspond to a AAA–A rating, ''medium risk'' would roughly correspond to a BBB–BB rating, and ''high risk'' would correspond to a B rating or below, respectively.

Question 9: How does this market-based alternative to credit ratings compare to the proposed approaches regarding operational feasibility and reliability in assessing risk and an appropriate amount of capital?

Question 10: For what types of positions would the bond spread approach be most appropriate, and for what types of positions would it not be appropriate? Are there measures of market liquidity or other factors that the agencies should consider in evaluating the applicability of a credit spread approach?

Alternative Approach—Distinction Based on Proposed Revised ''Investment Grade'' Definition for National Banks

The agencies also are considering whether to permit banks to determine a specific risk-weighting factor for corporate debt positions based on whether the position is ''investment grade,'' as that term is defined in the OCC's regulations at 12 CFR 1.2(d). Under such an approach, an investment grade exposure might be assigned a risk-weighting factor of 6.0 percent and a non-investment grade exposure might be assigned a risk-weighting factor of 12.0 percent.

The OCC's investment securities regulations generally require a bank to determine whether or not a security is ''investment grade'' in order to determine whether purchasing the security is permissible. The OCC's investment securities regulations at 12 CFR part 1 use credit ratings as a factor for determining the credit quality, marketability, and appropriate concentration levels of investment securities purchased and held by national banks. Under the OCC rules, an investment security must not be ''predominantly speculative in nature.'' The OCC rules provide that an obligation is not ''predominantly speculative in nature'' if it is rated investment grade or, if unrated, it is the credit equivalent of investment grade. ''Investment grade,'' in turn, is defined as a security rated in one of the four highest rating categories by two or more national recognized statistical rating organization (NRSROs)—or one NRSRO

[32] The Markit CDX North American Investment Grade Financial index is a sub index of the Markit CDX North American Investment Grade index. The number of index constituents varies based upon the number of financial constituents in the parent index.

[33] The Markit CDX North American High Yield B index is a sub index of the Markit CDX North American High Yield index. The number of index constituents varies based upon the number of B rated constituents in the parent index.

[34] The Markit CDX North American Investment Grade index is composed of one hundred twenty five (125) investment grade entities domiciled in North America, distributed among five (5) sub-sectors. Each reference entity is given approximately equal weighting, and index constituents are periodically updated using a rules-based approach accounting for liquidity, outstanding debt and rating.

if the security has been rated by only one NRSRO.[35]

Under the OCC's recently proposed revisions to its investment securities regulations, a security would be ''investment grade'' if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the security.[36] The ''adequate capacity to meet financial commitments'' standard would replace language in 12 CFR 1.2 which currently references NRSRO credit ratings. To meet this new standard, national banks would have to determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

When determining whether a particular issuer has an adequate capacity to meet financial commitments under a security for the projected life of the security, the OCC would expect national banks to consider a number of factors, to the extent appropriate. These may include consideration of internal analyses, third-party research and analytics including external credit ratings, internal risk ratings, default statistics, and other sources of information as appropriate for the particular security. Additionally, when purchasing a corporate debt security, a bank would be expected to be able to confirm that the credit spread to U.S. Treasuries is consistent with bonds of similar credit quality; confirm that the risk of default is low and consistent with bonds of similar credit quality; and show that it understands local demographics and economics relevant to the performance of the obligor.

While external credit ratings and assessments would remain a valuable source of information and provide national banks with a standardized credit risk indicator, banks would have to supplement the credit ratings with due diligence processes and analyses that are appropriate for the bank's risk profile and for the amount and complexity of the debt instrument. Therefore, it would be possible that a security rated in the top four rating categories by a credit rating agency may not satisfy the proposed revised investment grade standard.

The agencies believe such an approach would be consistent with current practices and therefore relatively simple for banks to implement. Additionally, banks would be able to apply it to corporate debt securities issued by both financial and non-financial institutions. However, this approach has limited granularity.

Question 11: What are the pros and cons of a more simple approach, which distinguishes only among investment grade and non-investment grade corporate debt positions relative to the more granular three-indicator methodology? What are the pros and cons of offering the investment grade/non-investment grade (under the OCC's proposed revisions to 12 CFR part 1) approach as an alternative for banks that do not use the three-indicator approach?

7. Securitization Positions

Under the current market risk capital rules, if a bank does not model specific risk, it must calculate a specific risk capital add-on for each securitization position subject to the rule using a standardized method. Under the standardized method, a bank must multiply the absolute value of the current market value of each net long and net short position in a securitization position by the appropriate specific risk-weighting factor specified in the rule. These specific risk-weighting factors range from zero to 8.0 percent and are based on the credit rating and remaining contractual maturity of the position. In addition, banks must apply the highest specific risk-weighting factor (8.0 percent) to unrated securitization positions.

Under the 2009 revisions and the January 2011 NPR, a bank is no longer permitted to model specific risk for securitization positions, including re-securitization positions, with the exception of certain correlation trading positions. Instead, the bank must use the specific risk-weighting factors based on credit ratings, as shown in Tables 13 and 14 below.

TABLE 13—LONG-TERM CREDIT RATING SPECIFIC RISK-WEIGHTING FACTORS FOR SECURITIZATION POSITIONS IN THE BASEL MARKET RISK FRAMEWORK

Illustrative external rating description	Example	Securitization exposure (that is not a re-securitization exposure) specific risk-weighting factor (in percent)	Re-securitization exposure specific risk-weighting factor (in percent)
Highest investment grade rating	AAA	1.60	3.20
Second-highest investment grade rating	AA	1.60	3.20
Third-highest investment grade rating	A	4.00	8.00
Lowest investment grade rating	BBB	8.00	18.00
One category below investment grade	BB	28.00	52.00
Two categories below investment grade	B	100.00	100.00
Three categories or more below investment grade	CCC	100.00	100.00

TABLE 14—SHORT-TERM CREDIT RATING SPECIFIC RISK-WEIGHTING FACTORS FOR SECURITIZATION POSITIONS IN THE BASEL MARKET RISK FRAMEWORK

Illustrative external rating description	Example	Securitization exposure (that is not a re-securitization exposure) specific risk-weighting factor (in percent)	Re-securitization exposure specific risk-weighting factor (in percent)
Highest investment grade rating	A–1/P–1	1.60	3.20
Second-highest investment grade rating	A–2/P–2	4.00	8.00

[35] An NRSRO is a credit rating agency registered with the U.S. Securities and Exchange Commission.

[36] 76 FR 73526 (Nov. 29, 2011).

TABLE 14—SHORT-TERM CREDIT RATING SPECIFIC RISK-WEIGHTING FACTORS FOR SECURITIZATION POSITIONS IN THE BASEL MARKET RISK FRAMEWORK—Continued

Illustrative external rating description	Example	Securitization exposure (that is not a re-securitization exposure) specific risk-weighting factor (in percent)	Re-securitization exposure specific risk-weighting factor (in percent)
Third-highest investment grade rating	A–3/P–3	8.00	18.00
All other ratings	N/A	100.00	100.00

In this proposal, a securitization generally means a transaction in which (1) all or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties; (2) the credit risk associated with the underlying exposures has been separated into at least two tranches that reflect different levels of seniority; (3) performance of the securitization position depends upon the performance of the underlying exposures; (4) all or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities); (5) for non-synthetic securitizations, the underlying exposures are not owned by an operating company; (6) the underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682); and (7) the underlying exposures are not owned by a firm, an investment in which qualifies as a community development investment under 12 U.S.C. 24 (Eleventh). A re-securitization means a securitization in which one or more of the underlying exposures is a securitization position. Securitization position means a covered position that is an on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a securitization (including a re-securitization); or an exposure that directly or indirectly references a securitization exposure. A re-securitization position means a covered position that is an on- or off-balance sheet exposure to a re-securitization; or an exposure that directly or indirectly references a re-securitization exposure.

Under the proposed rule, the agencies have developed a simplified version of the Basel II advanced approaches supervisory formula approach (SFA) to assign specific risk-weighting factors to securitization positions including re-securitization positions. In this proposal, the simplified version is referred to as the simplified supervisory formula approach (SSFA). If a bank cannot, or chooses not to, use the SSFA, a securitization position would be subject to a specific risk-weighting factor of 100 percent, which is roughly the equivalent of a 1,250 percent risk weight.

Similar to the SFA, the SSFA is based on the capital requirements that would be applied to all exposures underlying a securitization.[37] A bank would need several inputs to calculate the SSFA. The first input is the weighted-average capital requirement under the general risk-based capital rules that would be assigned to the underlying exposures, if those exposures were held directly by the bank. The second and third inputs indicate the position's level of subordination and relative size within the securitization. The fourth input is the level of losses actually experienced on the underlying exposures.

The SSFA is designed to apply relatively higher capital requirements to the more risky junior tranches of a securitization that are the first to absorb losses and relatively lower requirements to the most senior positions. The SSFA applies a 100 percent specific risk-weighting factor (roughly equivalent to a 1,250 percent risk weight) to securitization positions that absorb losses up to the amount of capital that would be required for the underlying exposures under the agencies' general risk-based capital rules had those exposures been held directly by a bank. For example, assume a securitization position that is backed by a $100 pool of auto loans is subject to a 100 percent risk weight under the agencies' general risk-based capital rules. Application of a 100 percent risk weight to the $100 pool of loans would result in a total risk-based capital requirement of $8. Therefore, under the SSFA, securitization positions that would absorb up to the first $8 of loss in the securitization would be assigned a specific risk-weighting factor of 100 percent. For the remaining securitization tranches in this example that absorb losses beyond the first $8, the SSFA would apply capital requirements that would decrease as the seniority of the positions increases, subject to the supervisory floor, as described below.

Apart from the floor and other supervisory adjustments, the SSFA attempts to be as consistent as possible with the general risk-based capital rules that would apply if the underlying exposures were held directly by a bank. At the inception of a securitization, the SSFA would require more capital on a transaction-wide basis than would be required if the pool of assets had not been securitized. That is, if the bank held every tranche of a securitization, its overall capital charge would be greater than if the bank held the underlying assets in portfolios. The agencies believe that this effect would reduce the ability of banks to engage in regulatory capital arbitrage through the use of securitization. However, as discussed in more detail below, the agencies are seeking comment on whether it would be appropriate to make other adjustments to the SSFA that would either increase or decrease the overall capital requirements that would be produced using the SSFA.

Under the proposed rule, the SSFA specific risk-weighting factor for a position depends on the following inputs:

(i) K_G is the weighted-average capital requirement of the underlying exposures calculated using the agencies' general risk-based capital rules.

(ii) Parameter A is the attachment point of the position. This represents the threshold at which credit losses would first be allocated to the position. This input is the ratio, expressed as a decimal value between zero and one, of the dollar amount of the securitization positions that are subordinated to the position to the dollar amount of the entire pool of underlying assets.

[37] When using the SFA, a bank must meet minimum requirements under the Basel internal ratings-based approach to estimate probability of default and loss given default for the underlying exposures. Under the U.S. risk-based capital rules, the SFA is available only to banks that have been approved to use the advanced approaches.

(iii) Parameter D is the detachment point of the position. This represents the threshold at which credit losses allocated to the position would result in a total loss to the investor in the position. This input, which is a decimal value between zero and one, equals the value of Parameter A plus the ratio of (1) the dollar amount of the positions and all *pari passu* positions to (2) the dollar amount of the underlying exposures.

(iv) A supervisory calibration parameter, p. For securitization positions that are not re-securitization positions, this input is 0.5; for re-securitization positions, it is 1.5.

(v) Cumulative losses on the underlying pool of exposures, which affects the level of the specific risk-weighting factor floor, as discussed below.

A bank may use the SSFA to determine its specific risk-weighting factor for a securitization position only if it has information to assign each of the parameters for the position. In particular, if the bank does not know K_G for a position because it lacks the necessary information on the underlying exposures, the bank may not use the SSFA to determine its specific risk-weighting factor. Rather, the bank must apply a specific risk-weighting factor of 100 percent. The agencies believe that for most securitizations, the inputs to the SSFA are readily available from prospectuses for newly-issued securitizations and from servicer reports for existing securitizations.

The SSFA specific risk-weighting factor for the portion of a securitization position not subject to the 100 percent specific risk-weighting factor applied to the junior-most portion of the transaction is:

SSFA Formula

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

Where,

$$a = -\frac{1}{p \cdot K_G},$$

$$u = D - K_G$$

$$l = A - K_G$$

$$e = 2.71828$$

(the base of the natural logarithms) is equal to the greater of:

(i) K_{SSFA} multiplied by 100 and expressed as a percent; or

(ii) The supervisory minimum specific risk-weighting factor assigned to the tranche based on cumulative losses (see Table 15)

The agencies are proposing to apply a specific risk-weight factor floor that will increase as cumulative losses on the pool increase over time (see Table 15). This feature will enhance the risk sensitivity of the capital requirements for securitization positions by increasing the capital requirements for securitization exposures—particularly more senior tranches—as underlying pool quality exhibits credit deterioration. Under the agencies' current market risk capital rules, many senior securitization positions require limited amounts of capital, even if their external ratings are substantially downgraded. During the crisis, a number of highly rated senior securitization positions were subject to significant downgrades and suffered substantial losses. As indicated in the January 2011 NPR, the agencies are seeking to ensure that sufficient capital is held against such positions and that the amount of required capital is consistent with international agreements.

TABLE 15—SUPERVISORY MINIMUM SPECIFIC RISK-WEIGHTING FACTOR FLOORS FOR SECURITIZATION EXPOSURES

Cumulative losses of principal on originally issued securities as a percent of K_G at origination		Specific risk-weighting factor (in percent)
Greater than:	Less than or equal to:	
0	50	1.6
50	100	8.0
100	150	52.0
150	n/a	100.0

For example, if cumulative losses on a securitized residential mortgage pool, where the general risk-based capital requirement is 4 percent, rose to 3 percent (or 75 percent of the capital requirement on the underlying asset pool), the minimum specific risk-weighting factor would increase from 1.6 percent to 8.0 percent in accordance with table 15 above.

SSFA Example

To illustrate the specific risk-weighting factors produced by the SSFA, assume a hypothetical residential mortgage-backed securitization composed of four tranches: a senior-most tranches (S) and three junior tranches (M1, M2, and M3). Further assume that K_G is 4.0 percent (based on the 50 percent risk weight applied to prudently underwritten residential mortgages in the agencies' general risk-based capital framework). Table 16 shows the original balance, attachment point, detachment point, and SSFA specific risk-weighting factor for each tranche.

TABLE 16—EXAMPLE OF A HYPOTHETICAL RESIDENTIAL MORTGAGE-BACKED SECURITIZATION

Tranche	Current balance ($)	Attachment point (in percent)	Detachment point (in percent)	SSFA specific risk-weighting factor (in percent)
S	1,988,831,790	10.00	100.00	1.6
M1	88,392,524	6.00	10.00	15.9
M2	44,196,262	4.00	6.00	63.2
M3	88,392,524	0.00	4.00	100

To illustrate the effect of the SSFA on the specific risk-weighting factor as cumulative losses on the underlying exposures rise from a significant deterioration in credit quality, the following chart assumes that cumulative losses are equal to $121,539,720 (or 5.50 percent of the original balance). This represents cumulative losses that are approximately 137 percent of the original amount of capital that would be required to be held against the underlying exposures at origination as they were held directly by a bank (K_G). As such, the minimum supervisory specific risk-weighting factor increases from 1.6 percent to 52 percent. Tranche M3 is reduced to $0 as it absorbs losses in the amount of its principal balance. Similarly, tranche M2 reduces in size from $44,196,262 to $11,049,066 as it

absorbs the losses not absorbed by tranche M3.

Tranche	Current balance ($)	Attachment point (in percent)	Detachment point (in percent)	SSFA specific risk-weighting factor (in percent)
S	1,988,831,790	4.76%	100.00	52
M1	88,392,524	0.53	4.76	97
M2	11,049,066	0.00	0.53	100
M3	.....	0.00	0.00	.....

Specific Risk-Weighting Factors for Non-Modeled Securitization Positions and Modeled Correlation Trading Positions

The proposed rule specifies the following treatment for the determination of the total specific risk add-on for a portfolio of modeled correlation trading positions and for non-modeled securitization positions. For purposes of a bank calculating its comprehensive risk measure with respect to either the surcharge or floor calculation for a portfolio of correlation trading positions modeled under section 9 of the January 2011 NPR, the total specific risk add-on would be the greater of: (1) The sum of the bank's specific risk add-ons for each net long correlation trading position calculated using the standardized measurement method; or (2) the sum of the bank's specific risk add-ons for each net short correlation trading position calculated using the standardized measurement method.

For a bank's securitization positions that are not correlation trading positions and for securitization positions that are correlation trading positions not modeled under section 9 of the January 2011 NPR, the total specific risk add-on would be the greater of: (1) The sum of the bank's specific risk add-ons for each net long securitization position calculated using the standardized measurement method; or (2) the sum of the bank's specific risk add-ons for each net short securitization position calculated using the standardized measurement method.

This treatment is consistent with the BCBS's revisions to the market risk framework. With respect to securitization positions that are not correlation trading positions, the BCBS's June 2010 revisions provided a transitional period for this treatment. Thus, the agencies anticipate potential reconsideration of this provision at a future date.

Alternative Calibrations

Under certain circumstances, the SSFA may produce a specific risk-weighting factor for a securitization position that exceeds the specific risk-weighting factor that would otherwise be generated by the Basel market risk framework's ratings-based approach. For example, certain junior and mezzanine tranches of residential mortgage, credit card, or automobile loan securitization positions may attract a 100 percent specific risk-weighting factor under the SSFA while, depending upon the tranches' credit ratings, the ratings-based approach could assign significantly lower capital requirements. This occurs because the SSFA relies on: (1) The risk weight that would be assigned to the underlying exposures under the general risk-based capital rules, were the exposures held on the bank's balance sheet; and, (2) the particular position's attachment and detachment points. The SSFA does not take into consideration many forms of credit enhancements, such as excess spread, that may be recognized by credit rating agencies when assigning credit ratings. As such, the SSFA will result in a 100 percent specific risk-weighting factor for all securitization positions that detach at or below K_G.

To better align the specific risk-weighting factors generated by the SSFA with those from the ratings-based approach, the agencies could alter certain parameters in the SSFA. For example, for an automobile securitization, the risk weight generally applicable to the underlying exposures is 100 percent. Therefore, the SSFA assigns a 100 percent specific risk-weighting factor to securitization positions that detach at or below an 8 percent K_G. However, many automobile securitizations include credit enhancements, such as overcollateralization, and excess spread that would not be recognized under the SSFA.

To adjust for the lack of recognition of certain forms of credit enhancement, the agencies could introduce a scaling factor to adjust the SSFA based on the type or quality of assets underlying a securitization. The introduction of such a scaling factor could reduce the overall impact of the 100 percent specific risk-weighting factors for securitization positions that detach at or below an 8 percent K_G. For example, the agencies could scale K_G by 50 percent so that the 100 percent specific risk-weighting factor for such positions would be applied to the first 4 percent (0.5 * 8 percent = 4 percent) of the securitization structure rather than the 8 percent value in the example above.

More generally, establishing and adjusting the scaling factor would affect the overall amount of capital required by the SSFA on a transaction-wide basis across the tranches of a securitization. Lower values would correspond to a lower aggregate capital requirement and higher values to a higher aggregate requirement.

Question 12: Is the SSFA function appropriately calibrated and would it be a feasible and appropriate methodology for assigning specific risk add-ons for securitization positions? Why or why not? Are the minimum risk-weighting factors appropriate and appropriately calibrated? Why or why not? Please provide detailed responses and supporting data wherever possible.

Question 13: What are the benefits and drawbacks to using a scaling factor to better align the minimum capital requirements under the SSFA with those generated by the ratings-based approach? What other adjustments could the agencies consider to better recognize credit enhancements and align the minimum capital requirements? Please provide specific details on the mechanics of, and rationale for, any suggested methodology and the position types to which it should apply. How should an adjustment, such as a scaling factor, be implemented? For example, should it take into account the type of credit enhancement, asset class, loss experience, prudential requirements, or other criteria, and if so how and why?

Alternative Using a Concentration Ratio

The 2009 revisions incorporate several alternatives for assigning specific risk-weighting factors to unrated securitization positions. For example, for securitization positions that do not meet the requirements for

the Basel market risk framework's ratings-based approach, a bank may set the specific risk add-on for the securitization position equal to the absolute value of the market value of the effective notional amount of each net long or net short securitization position in the portfolio multiplied by 8 percent of the dollar-weighted average risk weight applicable to the underlying exposures and by a concentration ratio. The concentration ratio equals the sum of the notional amounts of all tranches in the securitization divided by the sum of the notional amounts of the tranches junior to or *pari passu* with the tranche in which the position is held, including the amount of that tranche itself. If the concentration ratio is 12.5 or higher, the bank would have to apply a specific risk-weighting factor of 100 percent to the securitization position.

The agencies are considering whether to use the concentration ratio in place of, or as a complement to, the SSFA. Like the SSFA, the concentration ratio relies on the calculation of the dollar-weighted average risk weight applicable to the underlying exposures in a securitization position. As such, the agencies believe that the specific risk-weighting factor for securitization positions could be easily calculated using the concentration ratio.

Question 14: What are the pros and cons of incorporating the concentration ratio into the market risk capital rules as a replacement or alternative to the SSFA?

Question 15: In what instances and for what types of securitization positions should the concentration ratio be used? For what types of securitization positions does the concentration ratio produce a specific risk-weighting factor that is better aligned with the risk inherent in the position than the SSFA?

Alternative Using a Credit Spread Approach

Another alternative for determining the specific risk-weighting factor for a securitization could include the use of market data. Such a methodology could set and adjust the specific risk-weighting factor of a securitization position based on the spread between the rate of the position and the rate on a U.S. Treasury obligation of similar maturity and the movements of an index of securities. This methodology would be designed to adjust specific risk-weighting factors based on changes in the risk characteristics of the individual securitization position relative to changes in the broader market. This methodology would recognizes that when assessing the riskiness of a position relative to a benchmark, a change in the spread of a securitization position should be interpreted differently when comparable market spreads remain stable or when they exhibit volatility.

A credit spread approach could be based on a scoring model driven by three variables: (1) The spread of the securitization position over U.S. Treasuries of comparable maturity; (2) the spread of a high-yield index of corporate exposures (e.g., CDX.HY.B [38]), which captures business cycle conditions; and (3) the maturity of the securitization. The methodology could assign a score on the basis of the following formula:

$$S_i = 3 + 7.07 \cdot sp - 3.03 \cdot sp_B - 0.57 \cdot (sp - B) - 0.63 \cdot mat$$

The variables sp, sp_B, and mat are":

(1) The natural logarithm of the quarterly moving average of the securitization spread over U.S. Treasuries with comparable maturity,[39] (2) the natural logarithm of the median spread on securities included in the CDX.HY.B index over the prior five business days, and (3) the natural logarithm of the maturity of the securitization exposure, expressed in fractions of a year. The specific risk-weighting factor would be assigned on the basis of Table 17 below.

TABLE 17—ALTERNATIVE APPROACH BASED ON CREDIT SPREADS FOR ASSIGNING SPECIFIC RISK-WEIGHTING FACTORS TO SECURITIZATION POSITIONS

Score is			Specific risk–weighting factor is (in percent)
Less than	and	Greater than or equal to	
0.203 ...		N/A	1.6
0.741 ...		0.203	2.0
3.003 ...		0.741	2.8
5.870 ...		3.003	6.0
9.000 ...		5.870	34.0
N/A		9.000	100.0

To construct this methodology, three types of securitization exposures (automobiles, credit cards, and equipment) were examined, and the approach was also tested on securitizations backed by other asset classes, including commercial mortgage backed securities and residential mortgage backed securities. This analysis was conducted using different time periods, including before and after the 2008 financial crisis. The analysis indicated that this alternative could yield a reasonable level of credit risk differentiation. However, the agencies chose not to propose this approach in this NPR due to concerns that reliable spread data on many securitization positions would not be readily available. As is the case with other spread-based approaches, the agencies recognize that securitization spreads may be affected by factors other than credit risk, such as illiquidity.

Question 16: Is the spread-based methodology feasible for assigning securitization positions to specific risk-weighting factors? What are the particular types of securitization positions for which it is more or less feasible, and why?

Question 17: Would this alternative be more or less effective as a methodology for assigning specific risk-weighting factors for securitization positions than the proposed methodology using the SSFA? What difficulties or challenges would a bank have in assigning specific

[38] The CDX.HY.B index is comprised of high-yield credit default swaps that have reference assets rated approximately ''B'' by external credit rating agencies.

[39] The excess spread over U.S. Treasuries is appropriate for fully funded/collateralized securitizations. In other cases, the variable sp should be derived from the securitization spread and the level of collateralization which would be a proxy for the unfunded spread.

risk-weighting factors for securitization positions under this approach?

Question 18: What limitations currently exist with respect to banks' ability to obtain reliable spread data for securitization positions, including illiquid positions? If this method is implemented, how could banks demonstrate to supervisors sufficient access to such information to use the methodology?

Alternative Using a Third-Party Vendor Approach

The agencies also considered the approach used by the National Association of Insurance Commissioners for determining the regulatory capital requirements for certain securitization positions held by insurance companies. Under such an approach, the agencies would retain one or more third-party vendors to assign risk-based capital requirements for securitization positions. Working with the third-party vendor(s), the agencies would develop a rating system that would evaluate individual securitization positions based on expected loss or probability of default. Each securitization position could be evaluated on a quarterly or annual basis, and could be evaluated more frequently as appropriate, such as when economic conditions or other factors that could affect the performance of the underlying exposures or tranche changed.

The agencies are concerned that the employment of third-party vendors would have some of the same drawbacks as relying on credit rating agencies. Specifically, the agencies have concerns regarding the use of internal models; the limited number of vendors that possess the expertise and resources necessary to determine an appropriate rating for securitization positions; the potential for overreliance on third-party ratings; and the potential conflicts of interest where a vendor retained by the agencies remains engaged in the business of evaluating securitization positions for other clients.

Question 19: Given concerns noted above, what would be the advantages and disadvantages of such an approach, particularly relative to the proposed SSFA approach?

Alternative Permitting the SFA for Advanced Approaches Banks

Both the Basel II standardized and advanced approaches securitization frameworks use a hierarchy of approaches for measuring risk-based capital requirements for securitization exposures. Under the hierarchy of approaches, a bank must use an credit rating from an external credit assessment institution (ECAI), when available. The 2009 revisions allow a bank that has been approved to use the Basel II internal-ratings based approach (IRB) to apply the SFA. However, the Basel II Accord permits use of the SFA only for unrated securitization positions.

The agencies propose to adopt the SSFA for use by all banks subject to the market risk capital rules. That is, the SFA would not be an option available to advanced approaches banks within the market risk capital rules. The agencies expect that banks should be able to calculate the SSFA. Given concern about potential arbitrage opportunities that would be created if advanced approaches banks were allowed the option to use either the SSFA or the SFA to calculate specific risk capital requirements for their securitization positions, the agencies propose to permit advanced approaches banks to use only the SSFA for purposes of calculating the specific risk-weighting factors for their securitization positions.

Question 20: Should banks that are approved to use the advanced approaches be allowed to use the advanced approaches SFA to calculate specific risk-weighting factors for their securitization positions under the market risk capital rules? If the advanced approaches banks are permitted to use SFA, what safeguards should be put in place to mitigate arbitrage concern?

If the agencies were to allow the use of the SFA for assigning specific risk-weighting factors, the agencies would also consider modifications to the SFA to make it more risk-sensitive and more usable.

Under the advanced approaches rule, banks are allowed to use the SFA to calculate regulatory capital requirements for securitization positions if certain conditions are met.[40] The SFA requires banks to use exposure-specific inputs, including the capital requirement of the underlying exposures calculated under the agencies' advanced approaches rule as if the assets were held directly on a bank's balance sheet. The SFA was designed to allow banks to calculate capital requirements on unrated securitization positions that were originated by the banks holding the exposures. During the ANPR comment period and subsequent interaction with the industry, members of the industry indicated that banks generally do not possess the information necessary to assign a probability of default and loss given default, and hence calculate a capital requirement, for individual wholesale exposures or segments of retail exposures where the underlying securitized positions were not originated by the bank. The commenters proposed that the agencies could modify the methodology for calculating SFA inputs by allowing banks to incorporate pool-level estimates of PD and LGD. To increase risk sensitivity of the approach, pool-level inputs could be used on a quarterly basis.

Although the SFA recognizes credit enhancement provided by funded subordinated positions in a securitization, it does not recognize as a form of credit enhancement additional cash flows available to a securitization from payment of principal and interest. One commenter indicated that the inability to recognize additional cash flows understates the credit enhancement available to certain securitizations, especially automobile and credit card securitizations. Furthermore, this could create competitive issues for U.S. banks in comparison to foreign banks that use the ratings-based approach and internal assessment approach, which may recognize the impact of additional cash flows. In order to address this issue, the commenter proposed allowing the use of cash flow projections to inform the level of credit enhancement recognized under the SFA.

Question 21: How could the SFA be modified to permit the use of pool-level inputs to increase the applicability of the SFA for banks as investors? What effect would the use of pool-level inputs and the recognition of cash flow hedges have on the risk sensitivity of the SFA? To what extent does use of pool-level inputs camouflage the risk inherent in an asset pool? Are there other issues that should be considered if pool-level inputs are used?

Comparing Capital Frameworks Pursuant to Section 171(b) of the Dodd-Frank Act

Pursuant to section 171(b) of the Act, the agencies may not establish generally applicable minimum risk-based capital requirements that are quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of July 21, 2010.

The market risk capital rules' capital requirements, which were in effect on July 21, 2010, are part of the generally applicable risk-based capital requirements. Therefore, the agencies have considered the effect of

[40] *See* 12 CFR part 3, Appendix C section 45 (OCC); 12 CFR part 208, Appendix F, section 45 and 12 CFR part 225, Appendix G, section 45 (Board); 12 CFR part 325, Appendix D, section 45 (FDIC).

implementing the proposed alternatives to credit ratings under the agencies' market risk capital rules.

The agencies believe that the proposed changes to the market risk capital rules would not result in minimum capital requirements that are quantitatively lower than the generally applicable requirements for insured depository institutions in effect on July 21, 2010. In this regard, the agencies note that under this proposal, the specific risk capital requirements for debt and securitization positions should increase relative to the capital requirements for those positions under the existing market risk capital rules as of July 21, 2010.

Regulatory Analysis

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[41] Under regulations issued by the Small Business Administration,[42] a small entity includes a commercial bank or bank holding company with assets of $175 million or less (a small banking organization). As of June 30, 2011, there were approximately 2,450 small bank holding companies, 648 small national banks, 499 small state member banks, and 2,554 small state nonmember banks.

The proposed rule would apply only if the bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets, or $1 billion or more. No small banking organizations satisfy these criteria. Therefore, no small entities would be subject to this rule.

OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes 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 (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC estimates that the overall cost of the proposed rule in the first year of implementation will be approximately $7.4 million. Eliminating start-up costs after the first year, we expect the annual cost in subsequent years to be roughly half of the start-up costs for data acquisition, calculation, and verification. We estimate this ongoing cost at approximately $1.3 million.

The OCC also recognizes that market risk capital requirements are likely to change under the proposed rule. The largest capital impact of the proposed rule is likely to affect securitizations, corporate debt positions, and exposures to sovereigns. The increased risk sensitivity of the alternative measures of creditworthiness implies that specific risk capital requirements may go down for some trading assets and up for others. For those assets with a higher specific risk capital charge under the proposed rule, however, that increase is likely to be large, in some instances requiring a dollar-for-dollar capital charge.

At this time the OCC is unable to estimate the capital impact of this NPR with precision. While the impact on certain items (for example, U.S. Treasury Securities) will be zero, the impact on the other asset categories is less clear. For example, the actual impact on the specific risk capital requirements for a bank's holdings of corporate debt securities will depend on the quality of the assets as determined by the measures of creditworthiness set forth in the NPR. While the OCC anticipates that this impact may be large, the agency lacks the information on the composition and quality of the trading portfolio that would allow us to estimate a likely capital charge. The actual impact on market risk capital requirements also will depend on the extent to which institutions model specific risk.

For the January 2011 proposal, the OCC derived its estimate of the proposal's potential effect on market risk capital requirements using the third trading book impact study conducted by the Basel Committee on Banking Supervision in 2009 and additional estimates of the capital requirement for standardized securitization exposures and correlation trading positions.[43] Based on those assessments, the OCC estimated that the market risk capital requirements for national banks would increase by approximately $51 billion. These new capital requirements would lead banks to deleverage and lose the tax advantage of debt. Therefore, the OCC estimated that the loss of these tax benefits would be approximately $334 million per year. Because the estimated cost of the January 2011 proposal exceeded $100 million annually, the OCC prepared a budgetary impact analysis and identified and considered alternative approaches.[44]

Because the OCC expects that the alternative measures of creditworthiness set forth in this NPR will produce specific risk capital requirements that are comparable to those published by the Basel Committee, the OCC does not expect increased market risk capital requirements due to this NPR to differ substantially from our previous estimate. Thus, the OCC has not included an additional cost of capital component in this assessment, and the overall estimate of the cost of the proposed rule for national banks is $7.4 million in the first year.

Because the OCC has determined that its portion of this NPR would not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more, the OCC has not prepared a new budgetary impact statement or specifically addressed any new regulatory alternatives.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have reviewed the proposed rulemaking and determined that there are no additional PRA requirements other than those previously identified in a related proposed rulemaking published on January 11, 2011 (76 FR 1890). The agencies sought public comment on these PRA requirements as part of the January proposed rulemaking and no comments were received on the PRA requirements.

Plain Language

Section 722 of the GLBA required the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this proposed rule easier to understand. For example:

[41] *See* 5 U.S.C. 603(a).

[42] *See* 13 CFR 121.201.

[43] The report, ''Analysis of the third trading book impact study'', is available at *www.bis.org/publ/bcbs163.htm.* The study gathered data from 43 banks in 10 countries, including six banks from the United States.

[44] *See* 76 FR 1908 (January 11, 2011).

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

The Text of the Proposed Common Rules (All Agencies)

The text of the further amendments to the proposed common rules published January 11, 2011, at 76 FR 1912 through 1920, consisting of the proposed addition of new definitions to Section 2 in alphabetical order, addition of Schedule A to Section 2, and a revised Section 10, is set forth below:

Appendix to Part—Risk-Based Capital Guidelines; Market Risk Adjustment

* * * * *

Section 2. Definitions

* * * * *

Affiliate with respect to a company means any company that controls, is controlled by, or is under common control with, the company.

* * * * *

Control A person or company controls a company if it

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

* * * * *

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a government sponsored entity, or a securitization.

* * * * *

Country risk classification (CRC) for a sovereign entity means the consensus CRC published from time to time by the Organization for Economic Cooperation and Development that provides a view of the likelihood that the sovereign entity will service its external debt.

* * * * *

Credit derivative means a financial contract executed under standard industry documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider).

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752).

Cumulative losses means the dollar amount of aggregate losses on the underlying exposures, net of recoveries, since deal closing or origination of a securitization.

* * * * *

Debt-to-assets ratio means a ratio calculated by dividing a public company's total liabilities by the sum of its equity market value and total liabilities as reported as of the end of the most recent calendar quarter.

* * * * *

Default by a sovereign entity means noncompliance by the sovereign entity with its external debt service obligations or the inability or unwillingness of a sovereign entity to service an existing obligation according to its original contractual terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

* * * * *

EBITDA-to-assets ratio means a ratio calculated by dividing:

(1) A corporate entity's cumulative earnings over the previous four quarters before interest expense, taxes, depreciation and amortization (EBITDA) using data from the four most recently reported calendar quarters; by

(2) Its equity market value plus total liabilities as reported as of the end of the most recent calendar quarter.

Equity market value means the sum of:

(1) The number of outstanding shares as of the end of the most recent calendar quarter multiplied by the company's stock price on the last trading day of the most recent calendar quarter; and

(2) The measure of liabilities reported as of the end of the most recent calendar quarter.

* * * * *

Financial institution means

(1) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(2) A private fund as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. 80–b–2(a)); except for small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or a private fund designed primarily to promote the public welfare, of the type permitted under section 24 (Eleventh) of the National Bank Act (12 U.S.C. 24 (Eleventh)) and 12 CFR part 24;

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(4) A bank holding company, depository institution, foreign bank, credit union, insurance company, securities firm, other than an entity designated as a Community Development Financial Institution (CDFI) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805;

(5) Any other company predominantly engaged in activities that are in the business of banking under section 24 (Seventh) of the National Bank Act (12 U.S.C. 24), or in activities that are financial in nature under section 4(k) of the Bank Holding Company of 1956 (12 U.S.C. 1843(k)) as of the date this subpart becomes effective (collectively, ''financial activities''); provided that, if the company is not an affiliate of the [banking organization] calculating its capital requirements under this appendix, then the [banking organization] may exclude activities set forth on Schedule A when determining whether the company is predominantly engaged in financial activities.

(6) Any non-U.S. entity that would be covered by any of paragraphs (1) through (5) of this definition if such entity was organized in the United States; or

(7) Any other company that the [AGENCY] may determine is a financial institution based on the nature and scope of its activities.

(8) For the purposes of this part, a company is ''predominantly engaged'' in financial activities, if:

(i) 85 percent or more of the total consolidated annual gross revenues (as determined in accordance with applicable accounting standards) of the company in either of the two most recent calendar years were derived, directly or indirectly, by the company on a consolidated basis from financial activities; or

(ii) 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of either of the two most recent calendar years were related to financial activities.

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2) other than a depository institution.

* * * * *

General obligation means a bond or similar obligation that is guaranteed by the full faith and credit of states or other political subdivisions of a sovereign entity.

Government sponsored entity (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

* * * * *

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in

which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk.

* * * * *

Private company means a company that is not a public company.

Public company means a company that has issued common shares or equivalent equity instruments that are publicly traded.

* * * * *

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign entity level.

Publicly traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within five business days.

* * * * *

Revenue obligation means a bond or similar obligation, including loans and leases, that is an obligation of a state or other political subdivision of a sovereign entity, but for which the government entity is committed to repay with revenues from the specific project financed rather than with general tax funds.

* * * * *

Sovereign debt position means a direct exposure to a sovereign entity.

* * * * *

Sovereign of incorporation means the country where an entity is incorporated, chartered, or similarly established

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Stock return volatility measure means the annual volatility of the corporate entity's monthly stock returns calculated as the standard deviation of the monthly stock returns calculated using prices as of the last trading day of each month over the preceding 12 months, adjusted for stock splits.

Underlying exposure means one or more exposures that have been securitized in a securitization transaction.

Schedule A to Section 2

Acting as a certification authority for digital signatures. Providing services designed to verify or authenticate the identity of customers conducting financial and non-financial transactions over the Internet and other ''open'' electronic networks.

Administrative and related services to mutual funds. Providing administrative and related services to mutual funds.

ATM sales to banks and ATM services. Purchasing ATMs for resale to banks, and providing services for banks in the ATM network.

Career counseling services. Providing career counseling services to:

(1) A financial organization and individuals currently employed by, or recently displaced from, a financial organization;

(2) Individuals who are seeking employment at a financial organization; and

(3) Individuals who are currently employed in or who seek positions in the finance, accounting, and audit departments of any company.

Coins, buying and selling. Buying and selling privately minted commemorative coins.

Collection agency services. Collecting overdue accounts receivable, either retail or commercial.

Community development activities.

(1) Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents, including any investment of the type permitted under section 24 (Eleventh) of the National Bank Act (12 U.S.C. 24 (Eleventh)) and 12 CFR part 24; and

(2) Providing advisory and related services for programs designed primarily to promote community welfare.

Courier services. Providing courier services for:

(1) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(2) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.

Credit bureau services. Maintaining information related to the credit history of consumers and providing the information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

Data processing.

(1) Providing data processing and data transmission services; facilities (including data processing and data transmission hardware, software, documentation, or operating personnel); databases; advice; and access to services, facilities, or databases by any technological means if the data to be processed, stored or furnished are financial, banking, or economic; and

(2) Conducting data processing and data transmission activities not described above that are not financial, banking, or economic.

Development of marketing plans and materials for mutual funds. Developing marketing plans and the preparation of advertising, sales literature, and marketing materials for mutual funds.

Employee benefits consulting services. Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

Financial and investment advisory activities. Acting as an investment adviser or financial adviser to any person, including:

(1) Serving as an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–3) including sponsoring, organizing, and managing a closed-end investment company;

(2) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(3) Providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, reorganizations, recapitalizations, capital structurings, financing transactions, and similar transactions, and conducting financial feasibility studies;

(4) Providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments;

(5) Providing educational courses and instructional materials to consumers on individual financial-management matters; and

(6) Providing tax-planning and tax-preparation services to any person.

Finder activities. Acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.

Investment in companies that develop, distribute and support software. Investing and taking warrants in companies that develop, distribute, and support software that enables secure payments over the Internet.

Leasing personal or real property. Leasing personal or real property or acting as agent, broker, or adviser in leasing such property.

Management consulting and counseling activities: Providing management consulting advice:

(1) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies, and branches or agencies of foreign banks; and

(2) On any financial, economic, accounting, or audit matter to any other company.

Money orders, savings bonds, and traveler's checks. The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

Operating a travel agency. Operating a travel agency in connection with financial services.

Printing and selling MICR-encoded checks and related documents. Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

Providing employment histories to third parties. Proving employment histories to

third-party credit grantors, including depository and nondepository grantors, for use in making decisions to extend credit, and to third-party depository institutions and their affiliates, including credit unions and their affiliates for use in the regular course of their business, including the hiring of employees.

Real estate and personal property appraising. Performing appraisals of real estate and tangible and intangible personal property, including securities.

Real estate settlement servicing. Providing real estate settlement services, including through a title insurance agency.

Real estate title abstracting. Reporting factual information concerning the interests or ownership of selected real property.

Sales-tax refund agency activities. Acting as a sales-tax refund agent on behalf of state and local governments.

Sale of government services. Sale of government services involving:

(1) Postage stamps and postage-paid envelopes;

(2) Public transportation tickets and tokens;

(3) Vehicle registration services (including the sale and distribution of license plates and license tags for motor vehicles); and

(4) Notary public services.

Sale or license of corporate credit card data processing software. Purchasing for resale or licensing data processing software designed to monitor corporate credit card usage, merge usage data, generate invoices, and approve/make payments.

Sale of Web site software and other Web site hosting services. Selling Web site editing software as part of a bundle of internet-based Web site hosting services for bank customers; and developing new software products to be used in conjunction with transaction processing services and in developing Internet-based services.

Software development and production. Engaging in joint ventures to develop and distribute home banking and financial management software to be distributed through banks and through retail outlets.

Title insurance agency activities. Operating a title insurance agency.

* * * * *

Section 10. Standardized Measurement Method for Specific Risk

(a) *General requirement.* A [banking organization] must calculate a total specific risk add-on for each portfolio of debt and equity positions for which the [banking organization]'s VaR-based measure does not capture all material aspects of specific risk and for all securitization positions that are not modeled under section 9 of this rule. A [banking organization] must calculate each specific risk add-on in accordance with the requirements of this section.

(1) The specific risk add-on for an individual debt or securitization position that represents purchased credit protection is capped at the market value of the position.

(2) For debt, equity, or securitization positions that are derivatives with linear payoffs, a [banking organization] must assign a specific risk-weighting factor to the market value of the effective notional amount of the underlying instrument or index portfolio. A swap must be included as an effective notional position in the underlying instrument or portfolio, with the receiving side treated as a long position and the paying side treated as a short position. For debt, equity, or securitization positions that are derivatives with nonlinear payoffs, a [banking organization] must risk weight the market value of the effective notional amount of the underlying instrument or portfolio multiplied by the derivative's delta.

(3) For debt, equity, or securitization positions, a [banking organization] may net long and short positions (including derivatives) in identical issues or identical indices. A [banking organization] may also net positions in depositary receipts against an opposite position in an identical equity in different markets, provided that the [banking organization] includes the costs of conversion.

(4) A set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge has a specific risk add-on of zero if the debt or securitization position is fully hedged by a total return swap (or similar instrument where there is a matching of swap payments and changes in market value of the debt or securitization position) and there is an exact match between the reference obligation of the swap and the debt or securitization position, the maturity of the swap and the debt or securitization position, and the currency of the swap and the debt or securitization position.

(5) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of paragraph (a)(4) of this section is equal to 20.0 percent of the capital requirement for the side of the transaction with the higher capital requirement when the credit risk of the position is fully hedged by a credit default swap or similar instrument and there is an exact match between the reference obligation of the credit derivative hedge and the debt or securitization position, the maturity of the credit derivative hedge and the debt or securitization position, and the currency of the credit derivative hedge and the debt or securitization position.

(6) The specific risk add-on for a set of transactions consisting of either a debt position and its credit derivative hedge or a securitization position and its credit derivative hedge that does not meet the criteria of either paragraph (a)(4) or (a)(5) of this section, but in which all or substantially all of the price risk has been hedged, is equal to the specific risk add-on for the side of the transaction with the higher specific risk add-on.

(b) *Debt and securitization positions.* (1) Unless otherwise provided in paragraph (b)(3) of this section, the total specific risk add-on for a portfolio of debt or securitization positions is the sum of the specific risk add-ons for individual debt or securitization positions, as computed under this section. To determine the specific risk add-on for individual debt or securitization positions, a [banking organization] must multiply the absolute value of the current market value of each net long or net short debt or securitization position in the portfolio by the appropriate specific risk-weighting factor as set forth in paragraphs (b)(2)(i) through (b)(2)(vii) of this section.

(2) For the purpose of this section, the appropriate specific risk-weighting factors include:

(i) *Sovereign debt positions.* (A) *In general.* A [banking organization] must assign a specific risk-weighting factor to a sovereign debt position based on the CRC applicable to the sovereign entity in accordance with Table 2.

(*1*) Sovereign debt positions that are backed by the full faith and credit of the United States are to be treated as having a CRC rating of 0.

TABLE 2—SPECIFIC RISK-WEIGHTING FACTORS FOR SOVEREIGN DEBT POSITIONS

Sovereign CRC	Specific risk-weighting factor (in percent)	
0–1	0.0	
2–3	Residual term to final maturity 6 months or less	0.25
	Residual term to final maturity greater than 6 months and up to and including 24 months.	1.0
	Residual term to final maturity exceeding 24 months	1.6
4–6	8.0	
7	12.0	
No CRC	8.0	

(B) Notwithstanding paragraph (b)(2)(i)(A) of this section, a [banking organization] may assign to a sovereign debt position a specific risk-weighting factor that is lower than the applicable specific risk-weighting factor in Table 2 if:

(*1*) The position is denominated in the sovereign entity's currency;

(*2*) The [banking organization] has at least an equivalent amount of liabilities in that currency; and

(*3*) The sovereign entity allows banks under its jurisdiction to assign the lower specific risk-weighting factor to the same exposures to the sovereign entity.

(C) A [banking organization] must assign a 12.0 percent specific risk-weighting factor to a sovereign debt position (*1*) immediately upon determination that the sovereign entity has defaulted on any outstanding sovereign debt position, or (*2*) if the sovereign entity has defaulted on any sovereign debt position during the previous five years.

(D) A [banking organization] must assign an 8.0 percent specific risk-weighting factor to a sovereign debt position if the sovereign entity does not have a CRC assigned to it, unless the sovereign debt position must be assigned a higher specific risk-weighting factor under paragraph (b)(2)(i)(C) of this section.

(ii) *Certain supranational entity and multilateral development bank debt positions.* A [banking organization] may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(iii) *GSE debt positions.* A [banking organization] must assign a 1.6 percent specific risk-weighting factor to a debt position that is an exposure to a GSE. Notwithstanding the forgoing, a [banking organization] must assign an 8.0 percent specific risk-weighting factor to preferred stock issued by a GSE.

(iv) *Depository institution, foreign bank, and credit union debt positions.* (A) Except as provided in paragraph (b)(2)(iv)(B) of this section, a [banking organization] must assign a specific risk-weighting factor to a debt position that is an exposure to a depository institution, a foreign bank, or a credit union using the specific risk-weighting factor that corresponds to that entity's sovereign of incorporation in accordance with Table 3.

TABLE 3—SPECIFIC RISK-WEIGHTING FACTORS FOR DEPOSITORY INSTITUTION, FOREIGN BANK, AND CREDIT UNION DEBT POSITIONS

CRC of Sovereign of Incorporation	Specific risk-weighting factor (in percent)	
0–2	Residual term to final maturity 6 months or less	0.25
	Residual term to maturity up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6
3	8.0	
4–7	12.0	
No CRC	8.0	

(B) A [banking organization] must assign a specific risk-weighting factor of 8.0 percent to a debt position that is an exposure to a depository institution or a foreign bank that is includable in the depository institution's or foreign bank's regulatory capital and that is not subject to deduction as a reciprocal holding pursuant to 12 CFR part 3, appendix A, section 2(c)(6)(ii) (national banks); 12 CFR part 208, appendix A, section II.B.3 (state member banks); 12 CFR part 225, appendix A, section II.B.3 (bank holding companies); 12 CFR part 325, appendix A, section I.B.(4) (state nonmember banks); and 12 CFR part 167.5(c)(2)(i) (savings associations).

(v) *PSE debt positions.* (A) Except as provided in paragraph (b)(2)(v)(B) of this section, a [banking organization] must assign a risk-weighting factor to a debt position that is an exposure to a PSE based on the specific risk-weighting factor that corresponds to the PSE's sovereign of incorporation and to the position's categorization as a general obligation or revenue obligation, as set forth in Tables 4 and 5.

(B) A [banking organization] may assign a lower specific risk-weighting factor than would otherwise apply under Table 4 to a debt position that is an exposure to a foreign PSE if:

(*1*) The PSE's sovereign of incorporation allows banks under its jurisdiction to assign a lower specific risk-weighting factor to such position; and

(*2*) The specific risk-weighting factor is not lower than the risk-weight that corresponds to the PSE's sovereign of incorporation in accordance with Table 4.

TABLE 4—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE GENERAL OBLIGATION DEBT POSITIONS

Sovereign Entity CRC	General obligation specific risk-weighting factor (in percent)	
0–2	Residual term to final maturity 6 months or less	0.25
	Residual term to maturity up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6
3	8.0	
4–7	12.0	
No CRC	8.0	

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS

Sovereign Entity CRC	Revenue obligation specific risk-weighting factor (in percent)	
0–1	Residual term to final maturity 6 months or less	0.25
	Residual term to maturity up to and including 24 months	1.0
	Residual term to final maturity exceeding 24 months	1.6

TABLE 5—SPECIFIC RISK-WEIGHTING FACTORS FOR PSE REVENUE OBLIGATION DEBT POSITIONS—Continued

2–3	8.0
4–7	12.0
No CRC	8.0

(vi) *Corporate debt positions.* A [banking organization] must assign a specific risk-weighting factor to a corporate debt position in accordance with the methodologies in paragraph (b)(2)(vi)(A) or (b)(2)(vi)(B) of this section provided that the [banking organization] consistently applies the same methodology to all corporate debt positions.

(A) *Simple methodology.* A [banking organization] that uses the simple methodology must assign a specific risk-weighting factor of 8.0 percent to all of its corporate debt positions.

(B) *Indicator-based methodology.* A [banking organization] that elects to use the indicator-based methodology must assign a specific risk-weighting factor to its corporate debt positions in accordance with paragraphs (b)(2)(vi)(B)(*1*) through (b)(2)(vi)(B)(*4*) of this section.

(*1*) *Debt positions in a public company that is not a financial institution.* A [banking organization] must assign a specific risk-weighting factor to a corporate debt position that is an exposure to a public company that is not a financial institution, as set forth in Table 6, corresponding with the results of the following calculations, using the most recently available data reported by the company:

(*i*) The EBITDA-to-assets ratio for the company;

(*ii*) The debt-to-assets ratio for the company; and

(*iii*) The stock return volatility measure for the company.

TABLE 6—SPECIFIC RISK-WEIGHTING FACTORS FOR NON-FINANCIAL PUBLICLY-TRADED COMPANY DEBT POSITIONS

EBITDA-to-assets ratio	Stock return volatility measure	Specific risk-weighting factor (in percent)		
		Debt-to-assets ratio less than 0.2	Debt-to-assets ratio between 0.2 and 0.5	Debt-to-assets ratio greater than 0.5
Greater than zero	less than 0.1	[1]	8.0	8.0
	between 0.1 and 0.15	8.0	8.0	8.0
	greater than 0.15	8.0	8.0	12.0
Less than zero	less than 0.1	8.0	8.0	8.0
	between 0.1 and 0.15	8.0	8.0	12.0
	greater than 0.15	12.0	12.0	12.0

[1] See Table 6A.

TABLE 6A—SPECIFIC RISK-WEIGHTING FACTORS FOR CERTAIN NON-FINANCIAL PUBLICLY-TRADED COMPANY DEBT POSITIONS

Remaining contractual maturity	Specific risk-weighting factor (in percent)
Residual term to final maturity 6 months or less	0.25
Residual term to final maturity greater than 6 months and up to and including 24 months	1.0
Residual term to final maturity exceeding 24 months	1.6

(*2*) *Financial institution debt position.* A [banking organization] must assign an 8.0 percent specific risk-weighting factor to a corporate debt position that is an exposure to a financial institution that is not a depository institution, foreign bank, or credit union.

(*3*) *Debt positions in a private company that is not a financial institution.* A [banking organization] must assign an 8.0 percent specific risk-weighting factor to a corporate debt position that is an exposure to a private company that is not a financial institution.

(*4*) *Insufficient information.* If a [banking organization] does not have sufficient information to determine the appropriate specific risk-weighting factor for a corporate debt position under paragraphs (b)(2)(vi)(B)(*1*) through (b)(2)(vi)(B)(*3*) of this section, the [banking organization] must assign an 8.0 percent specific risk-weighting factor to the position.

(C) *Limitations.* (*1*) A [banking organization] must assign a specific risk-weighting factor of at least 8.0 percent to an interest-only mortgage-backed security that is not a securitization position.

(*2*) A [banking organization] shall not assign a corporate debt position a specific risk-weighting factor that is lower than the specific risk-weighting factor that corresponds to the CRC rating of the obligor's sovereign of incorporation in Table 2.

(vii) *Securitization positions.* A [banking organization] may assign a specific risk-weighting factor to a securitization position using the simplified supervisory formula approach (SSFA) in accordance with this paragraph (vii). A [banking organization] that elects not to use the SSFA for a securitization position must assign a specific risk-weighting factor of 100 percent to the position.

(A) To use the SSFA to determine the specific risk-weighting factor for a securitization position, including re-securitization and synthetic securitization positions, a [banking organization] must have information that enables it to assign accurately the parameters described in paragraph (b)(2)(vii)(B) of this section. The [banking organization] also must have and maintain appropriate data to measure the cumulative losses for the underlying exposures. Data used to assign the parameters described in paragraph (b)(2)(vii)(B) and the cumulative losses must be the most currently available data and no more than 91 calendar days old. A [banking organization] that does not have the appropriate data to assign the parameters described in paragraph (b)(2)(vii)(B) must assign a specific risk-weighting factor of 100 percent to the position.

(B) To calculate the specific risk-weighting factor for a securitization position, a [banking organization] must use the following four parameters:

(*1*) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using [general risk-based capital rules]. K_G is expressed as a decimal value between zero and 1 (that is, an average risk weight of 100 percent implies a value of K_G equal to .08);

(*2*) The parameter A is the attachment point for the position, which represents the threshold at which credit losses will first be allocated to the position. Parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the position the [banking organization] to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the position that contains the [banking organization]'s securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the

account. Parameter A is expressed as a decimal value between zero and one.

(*3*) The parameter D is the detachment point for the position, which represents the threshold at which credit losses of principal allocated to the position would result in a total loss of principal. Parameter D equals parameter A plus the ratio of the current dollar amount of the securitization positions that are *pari passu* with the position (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter D is expressed as a decimal value between zero and one.

(*4*) A supervisory calibration parameter, p, equal to 0.5 for securitization positions that are not re-securitization positions and equal to 1.5 for re-securitization positions.

(C) *Mechanics of the SSFA.* The values of parameters A and D, relative to K_G determine the specific risk-weighting factor assigned to a position as described in this paragraph and paragraph (b)(2)(vii)(D) of this section. The specific risk-weighting factor assigned to a securitization position, or portion of a position, as appropriate, is the larger of the specific risk-weighting factor determined in accordance with this paragraph and paragraph (b)(2)(vii)(D) of this section and the specific risk-weighting factor determined in accordance with paragraph (b)(2)(vii)(E) of this section.

(*1*) When the detachment point, D, for a securitization position is less than or equal to K_G, the position must be assigned a specific risk-weighting factor of 100 percent.

(*2*) When the attachment point, A, for a securitization position is greater than or equal to K_G, the [banking organization] must calculate the specific risk-weighting factor in accordance with sub-paragraphs (D)(*1*) and (D)(*2*) of this paragraph.

(*3*) When A is less than K_G and D is greater than K_G, the portion that lies below K_G must be assigned a specific risk-weighting factor of 100 percent and the [banking organization] must calculate the specific risk-weighting factor for the portion that lies above K_G in accordance with paragraphs (D)(*1*) and (D)(*2*) of this paragraph. For the purpose of this calculation:

(*i*) The portion that lies below K_G equals K_G minus A.

(*ii*) The portion that lies above K_G equals D minus K_G.

(D) *SSFA equation.* (*1*) Define the following parameters:

$$a = -\frac{1}{p \cdot K_G}$$

$$u = D - K_G$$

$$l = A - K_G$$

$e = 2.71828$, the base of the natural logarithms.

(2) Then:

$$K_{SSFA} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

The specific risk-weighting factor for the position (expressed as a percent) is equal to $K_{SSFA} \times 100$.

(E) *Limitations.* A [banking organization] must assign a minimum specific risk-weighting factor to a securitization position based on the cumulative losses as a percent of the original dollar value of K_G in accordance with Table 7.

TABLE 7—MINIMUM SPECIFIC RISK-WEIGHTING FACTOR FOR A POSITION

Cumulative losses of principal on originally issued securities as a percent of K_G at origination		Minimum specific risk-weighting factor (in percent)
Greater than	Less than or equal to	
0	50	1.6
50	100	8.0
100	150	52.0
150	n/a	100.0

(3) *Nth-to-default credit derivatives.* The total specific risk add-on for a portfolio of nth-to-default credit derivatives is the sum of the specific risk add-ons for individual nth-to-default credit derivatives, as computed under this paragraph. The specific risk add-on for each nth-to-default credit derivative position applies irrespective of whether a [banking organization] is a net protection buyer or net protection seller. A [banking organization] must calculate the specific risk add-on for each nth-to-default credit derivative as follows:

(i) First-to-default credit derivatives.

(A) The specific risk add-on for a first-to-default credit derivative is the lesser of:

(*1*) The sum of the specific risk add-ons for the individual reference credit exposures in the group of reference exposures; or

(*2*) The maximum possible credit event payment under the credit derivative contract.

(B) Where a [banking organization] has a risk position in one of the reference credit exposures underlying a first-to-default credit derivative and this credit derivative hedges the [banking organization]'s risk position, the [banking organization] is allowed to reduce both the specific risk add-on for the reference credit exposure and that part of the specific risk add-on for the credit derivative that relates to this particular reference credit exposure such that its specific risk add-on for the pair reflects the bank's net position in the reference credit exposure. Where a [banking organization] has multiple risk positions in reference credit exposures underlying a first-to-default credit derivative, this offset is allowed only for the underlying reference credit exposure having the lowest specific risk add-on.

(ii) Second-or-subsequent-to-default credit derivatives.

(A) The specific risk add-on for a second-or-subsequent-to-default credit derivative is the lesser of:

(*1*) The sum of the specific risk add-ons for the individual reference credit exposures in the group of reference exposures, but disregarding the (n-1) obligations with the lowest specific risk add-ons; or

(*2*) The maximum possible credit event payment under the credit derivative contract.

(B) For second-or-subsequent-to-default credit derivatives, no offset of the specific risk add-on with an underlying reference credit exposure is allowed.

(c) *Modeled correlation trading positions.* For purposes of calculating the comprehensive risk measure for modeled correlation trading positions under either paragraph (a)(2)(i) or (a)(2)(ii) of section 9, the total specific risk add-on is the greater of:

(1) The sum of the [banking organization]'s specific risk add-ons for each net long correlation trading position calculated under this section; or

(2) The sum of the [banking organization]'s specific risk add-ons for each net short correlation trading position calculated under this section.

(d) *Non-modeled securitization positions.* For securitization positions that are not correlation trading positions and for securitizations that are correlation trading positions not modeled under section 9 of this rule, the total specific risk add-on is the greater of:

(1) The sum of the [banking organization]'s specific risk add-ons for each net long securitization position calculated under this section; or

(2) The sum of the [banking organization]'s specific risk add-ons for each net short securitization position calculated under this section.

(e) *Equity positions.* The total specific risk add-on for a portfolio of equity positions is the sum of the specific risk add-ons of the individual equity positions, as computed under this section. To determine the specific risk add-on of individual equity positions, a [banking organization] must multiply the absolute value of the current market value of each net long or net short equity position by the appropriate specific risk-weighting factor as determined under this paragraph.

(1) The [banking organization] must multiply the absolute value of the current market value of each net long or net short equity position by a specific risk-weighting factor of 8.0 percent. For equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the absolute value of the current market value of each net long or net short position is multiplied by a specific risk-weighting factor of 2.0 percent.[45]

(2) For equity positions arising from the following futures-related arbitrage strategies, a [banking organization] may apply a 2.0 percent specific risk-weighting factor to one side (long or short) of each position with the opposite side exempt from an additional capital requirement:

(i) Long and short positions in exactly the same index at different dates or in different market centers; or

(ii) Long and short positions in index contracts at the same date in different, but similar indices.

(3) For futures contracts on main indices that are matched by offsetting positions in a basket of stocks comprising the index, a [banking organization] may apply a 2.0 percent specific risk-weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks is comprised of stocks representing at least 90.0 percent of the capitalization of the index. A main index refers to the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the [banking organization] can demonstrate to the satisfaction of the [AGENCY] that the equities represented in the index have liquidity, depth of market, and size of bid-ask spreads comparable to equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(f) *Due diligence requirements.* (1) A [banking organization] must be able to demonstrate to the satisfaction of the [AGENCY] a comprehensive understanding of the features of a securitization position that would materially affect the performance of the position. The [banking organization]'s analysis must be commensurate with the complexity of the securitization position and the materiality of the position in relation to capital.

(2) To support the demonstration of its comprehensive understanding, for each securitization position a [banking organization] must:

(i) Conduct and document an analysis of the risk characteristics of a securitization position prior to acquiring the position, considering:

(A) Structural features of the securitization that would materially impact the performance of the position, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For re-securitization positions, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluate, review, and update as appropriate the analysis required under paragraph (d)(1) of this section for each securitization position.

[End of Common Text]

[45] A portfolio is well-diversified if it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value.

List of Subjects

12 CFR Part 3

Administrative practices and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Adoption of Common Rule

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, the Office of the Comptroller of the Currency proposes to further amend part 3 of chapter I of title 12 of Code of Federal Regulations, as proposed to be amended January 11, 2011, at 76 FR 1912 and 1921, as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 (note), 1831n note, 1835, 3907, and 3909.

2. Appendix B to part 3 is amended as set forth at the end of the common preamble.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to further amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as proposed to be amended January 11,

2011, at 76 FR 1912 and 1921, as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

3. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

4. Part 208 is amended as set forth at the end of the common preamble.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

5. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

6. Part 225 is amended as set forth at the end of the common preamble.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to further amend part 325 of chapter III of title 12 of Code of Federal Regulations, as proposed to be amended January 11, 2011, at 76 FR 1912 and 1921, as follows:

PART 325—CAPITAL MAINTENANCE

7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

8. Appendix C to part 325 is amended as set forth at the end of the common preamble.

Dated: December 7, 2011.

John Walsh,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, dated: Dec. 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of December 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–32073 Filed 12–20–11; 8:45 am]

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA830

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Construction Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction activities as part of a wharf construction project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to take, by Level B Harassment only, six species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than January 20, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Laws@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

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

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on May 25, 2011 from the Navy for the taking of marine mammals incidental to pile driving and removal in association with a wharf construction project in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted a revised version of the application on August 11, 2011, and, responsive to discussions with NMFS as well as new information about species in the area, submitted a final version deemed adequate and complete by NMFS on November 3, 2011. The wharf construction project is proposed to occur over multiple years; however, this IHA would cover only the initial year of the project, from July 16, 2012, through July 15, 2013. Pile driving and removal activities would occur only within an approved in-water work window from July 16–February 15. Six species of marine mammals are known from the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion, which is present only from fall to late spring (October to mid-April), and the California sea lion, which is only present from late summer to late spring (August to early June). Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in over 15 years and was therefore excluded from further analysis.

NBKB provides berthing and support services for OHIO Class ballistic missile submarines (SSBN), also known as TRIDENT submarines. The Navy proposes to begin construction of the Explosive Handling Wharf #2 (EHW–2) facility at NBKB in order to support future program requirements for TRIDENT submarines berthed at NBKB. The Navy states that construction of EHW–2 is necessary because the existing EHW alone will not be able to support future TRIDENT program requirements. Under the proposed action—which includes only the portion of the project that would be completed under this proposed 1-year IHA—a maximum of 195 pile driving days would occur. All piles would be driven with a vibratory hammer for their initial embedment depths, while select piles

would be impact driven for their final 10–15 ft (3–4.6 m) for proofing, as necessary. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (*i.e.,* bubble curtain) would be used during all impact hammer operations.

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving and removal impacts (NMFS, 2005b, 2009), outlined later in this document. The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from other 30–66 in (0.8–1.7 m) diameter pile driving events to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no Level A harassments would occur associated with pile driving or construction activities, and that as many as 18,225 Level B harassments may occur during the wharf construction project from sound produced by pile driving activity.

Description of the Specified Activity

NBKB is located on the Hood Canal approximately twenty miles (32 km) west of Seattle, Washington (see Figures 2–1 through 2–4 in the Navy's application). NBKB provides berthing and support services for OHIO Class ballistic missile submarines (SSBN), also known as TRIDENT submarines. The Navy proposes to begin construction of the EHW–2 facility at NBKB in order to support future program requirements for TRIDENT submarines berthed at NBKB. The Navy states that construction of EHW–2 is necessary because the existing EHW alone will not be able to support future TRIDENT program requirements. The proposed actions with the potential to cause harassment of marine mammals within the waterways adjacent to NBKB, under the MMPA, are vibratory and impact pile driving operations, as well as vibratory removal of falsework piles, associated with the wharf construction project. The proposed activities that would be authorized by this IHA would occur between July 16, 2012, and July 15, 2013. All in-water construction activities within the Hood Canal are only permitted during July 16–February 15 in order to protect spawning fish populations.

As part of the Navy's sea-based strategic deterrence mission, the Navy Strategic Systems Programs directs research, development, manufacturing, testing, evaluation, and operational support for the TRIDENT Fleet Ballistic Missile program. Development of necessary facilities for handling of explosive materials is part of these duties. The EHW–2 would consist of two components: (1) The wharf proper (or Operations Area), including the warping wharf; and (2) two access trestles. Please see Figures 1–1 and 1–2 of the Navy's application for conceptual and schematic representations of the proposed EHW–2. The Operations Area would include a support building and wharf cover. A warping wharf is a long, narrow wharf extension used to position submarines prior to moving into the Operations Area. The access trestles would allow vehicles to travel between the Operations Area and the shore.

The wharf proper would lie approximately 600 ft (183 m) offshore at water depths of 60–100 ft (18–30 m), and would consist of the main wharf, a warping wharf, and lightning protection towers, all pile-supported. It would include a slip (docking area) for submarines, surrounded on three sides by operational wharf area. The main wharf would include an operations support building providing office and storage space and mechanical/electrical system component housing. Additional facility support at the wharf would include heavy duty cranes suspended from the cover, power utility booms, six large lightning protection towers, and camels (operational platforms that float next to a moored vessel).

The access trestles would connect the wharf to the shore. There would be an entrance trestle and an exit trestle; these would be combined over shallow water to reduce overwater area. The trestles would be pile-supported on 24-in (0.6-m) steel pipe piles driven approximately 30 ft (9 m) into the seafloor. Spacing between bents (rows of piles) would be 25 ft (8 m). Concrete pile caps would be cast in place and would support pre-cast concrete deck sections.

For the entire project, a total of up to 1,250 permanent piles ranging in size between 24–48 in (0.6–1.2 m) in diameter would be driven in-water to construct the wharf, with up to three vibratory rigs and one impact driving rig operating simultaneously. Construction would also involve temporary installation of up to 150 falsework piles used as an aid to guide permanent piles to their proper locations. Falsework piles, which would be removed upon installation of the permanent piles, would likely be steel pipe piles and would be driven and removed using a vibratory driver. It has not been determined exactly what parts or how much of the project would be constructed during the first year; however, a maximum of 195 days of pile driving would occur. The analysis contained herein is based upon the maximum of 195 pile driving days, rather than any specific number of piles driven, and assumes that (1) all marine mammals available to be incidentally taken within the relevant area would be; and (2) individual marine mammals may only be incidentally taken once in a 24-h period—for purposes of authorizing specified numbers of take—regardless of actual number of exposures in that period. Table 1 summarizes the number and nature of piles required for the entire project, rather than what subset of piles may be expected to be driven during the first year of construction proposed for this IHA.

Feature	Quantity
Total number of permanent in-water piles.	Up to 1,250.
Size and number of main wharf piles.	24-in: 140. 36-in (0.9-m): 157. 48-in: 263.
Size and number of warping wharf piles.	24-in: 80. 36-in: 190.
Size and number of lightning tower piles.	24-in: 40. 36-in: 90.
Size and number of trestle piles.	24-in: 57. 36-in: 233.
Falsework piles	Up to 150, 18- to 24-in.
Maximum pile driving duration.	195 days (under 1-year IHA).

Pile installation would utilize vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles would be able to be vibratory driven to within several feet of the required depth. Pile drivability is, to a large degree, a function of soil conditions and the type of pile hammer. The soil conditions encountered during geotechnical explorations at NBKB indicate existing conditions generally consist of fill or sediment of very dense glacially overridden soils. Recent experience at two other construction locations along the NBKB waterfront indicates that most piles should be able to be driven with a vibratory hammer to proper embedment depth. However, difficulties during pile driving may be encountered as a result of obstructions that may exist throughout the project area. Such obstructions may consist of rocks or boulders within the glacially overridden soils. If difficult driving conditions

occur, increased usage of an impact hammer would occur.

Unless difficult driving conditions are encountered, an impact hammer will only be used to proof the load-bearing capacity of approximately every fourth or fifth pile. The industry standard is to proof every pile with an impact hammer; however, in an effort to reduce blow counts from the impact hammer, the engineer of record has agreed to only proof every fourth or fifth pile. A maximum of 200 strikes would be required to proof each pile. Pile production rates are dependent upon required embedment depths, the potential for encountering difficult driving conditions, and the ability to drive multiple piles without a need to relocate the driving rig. Under best-case scenarios (*i.e.,* shallow piles, driving in optimal conditions, using multiple driving rigs), it may be possible to install enough pilings with the vibratory hammer that proofing may be required for up to five piles in a day. Under this likely scenario, with a single impact hammer used to proof up to five piles per day at 200 strikes per pile, it is estimated that up to a maximum of 1,000 strikes from an impact hammer would be required per day.

If difficult subsurface driving conditions (*i.e.,* cobble/boulder zones) are encountered that cause refusal with the vibratory equipment, it may be necessary to use an impact hammer to drive some piles for the remaining portion of their required depth. The worst-case scenario is that a pile would be driven for its entire length using an impact hammer. Given the uncertainty regarding the types and quantities of boulders or cobbles that may be encountered, and the depth at which they may be encountered, the number of strikes necessary to drive a pile its entire length could be approximately 1,000 to 2,000 strikes per pile. The Navy estimates that a possible worst-case daily scenario would require driving three piles full length (at a worst-case of 2,000 strikes per pile) after the piles have become hung on large boulders early in the installation process, with proofing of an additional two piles (at 200 strikes each) that were able to be installed primarily via vibratory means. This worst-case scenario would therefore result in a maximum of 6,400 strikes per day. All piles driven or struck with an impact hammer would be surrounded by a bubble curtain or other sound attenuation device over the full water column to minimize in-water sound. Up to three vibratory rigs and one impact rig would be used at a time. Pile production rate (number of piles driven per day) is affected by many factors: size, type (vertical vs. angled), and location of piles; weather; number of driver rigs operating; equipment reliability; geotechnical (subsurface) conditions; and work stoppages for security or environmental reasons (such as presence of marine mammals).

Pile driving would typically take place 6 days per week. The allowable season for in-water work, including pile driving, at NBKB is July 16 through February 15, which was established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect juvenile salmon. Impact pile driving during the first half of the in-water work window (July 16 to September 15) would only occur between 2 hours after sunrise and 2 hours before sunset to protect breeding marbled murrelets (an ESA-listed bird under the jurisdiction of USFWS). Between September 16 and February 15, construction activities occurring in the water would occur during daylight hours (sunrise to sunset). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

The number of construction barges (derrick and material) on site at any one time would vary between two and eight depending on the type of construction taking place. The maximum number of eight barges would likely be present at the beginning of construction, with multiple rigs and their support barges required to complete the work at various areas of the wharf. As pile installation progresses, the area will become congested, limiting the space available to support the pile driving rigs and barges. Also, as sections of the wharf are completed the need for some of the rigs/barges will be reduced. As a result, fewer barges would likely be necessary as the project progresses. Tug boats would tow barges to and from the construction site and position the barges for construction activity. Tug boats would leave the site once these tasks were completed and so would not be on site for extended periods; there would be no more than two tug boats on site at any one time. Up to six smaller skiff-type boats would be on site performing various functions in support of construction and monitoring requirements.

Operation of the EHW–2 would not result in an increase in boat traffic along the NBKB waterfront. Rather, a portion of the ongoing operations and boat traffic at the existing EHW and other facilities within the Waterfront Restricted Area (*e.g.,* Delta Pier and Marginal Wharf) would be diverted to the EHW–2. The EHW–2 may be used as a backup explosives handling facility for TRIDENT submarines currently homeported at NBKB when there are no TRIDENT operations at the existing EHW. The EHW–2 may also provide temporary berthing when no ordnance handling operations are occurring at either wharf. No increase in boat traffic would be required to achieve planned operations. The increase in future operations at the waterfront would only require that boats remain at an EHW longer when in port for maintenance and upgrades. The overall level of traffic and activity along the NBKB waterfront would not increase as a result of operating the EHW–2. Operation of the EHW–2 may require approximately twenty additional military and civilian personnel. The EHW–2 would be staffed 24 hours per day, 7 days per week. Maintenance of the EHW–2 would include routine inspections, repair, and replacement of facility components as required. It would not be necessary to replace piles during the design life of the EHW–2. Fouling organisms would not be removed from piles.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to SPLs (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and

then taking the square root of the average (Urick, 1975). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones. Underwater sound levels ('ambient sound') are comprised of multiple sources, including physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). Even in the absence of anthropogenic sound, the sea is typically a loud environment. A number of sources of sound are likely to occur within Hood Canal, including the following (Richardson *et al.,* 1995):

• *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient noise levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km (5.3 mi) from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.

• *Precipitation noise:* Noise from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.

• *Biological noise:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

• *Anthropogenic noise:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies (Richardson *et al.,* 1995). Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they will attenuate (decrease) rapidly (Richardson *et al.,* 1995). Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 2. Details of each of the sources are described in the following text.

TABLE 2—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level (dB re 1 μPa)	Reference
Small vessels	250–1,000	151 dB rms at 1 m (3.3 ft)	Richardson *et al.,* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m (328 ft)	Blackwell and Greene, 2002.
Vibratory driving of 72-in (1.8 m) steel pipe pile.	10–1,500	180 dB rms at 10 m (33 ft)	Illingworth and Rodkin, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	WSDOT, 2007.
Impact driving of 66-in cast-in-steel-shell pile.	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving and removal. The sounds produced by these activities fall into one of two sound types: pulsed and non-pulsed (defined in next paragraph). The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (*e.g.,* explosions, gunshots, sonic booms, and impact pile driving) are brief, broadband, atonal transients (ANSI, 1986; Harris, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulse (intermittent or continuous sounds) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulse sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Caltrans, 2009). Rise time is slower, reducing the probability and severity of injury (USFWS, 2009), and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2001).

Ambient Sound

The underwater acoustic environment consists of ambient sound, defined as environmental background sound levels

lacking a single source or point (Richardson *et al.,* 1995). The ambient underwater sound level of a region is defined by the total acoustical energy being generated by known and unknown sources, including sounds from both natural and anthropogenic sources. The sum of the various natural and anthropogenic sound sources at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, the ambient sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995).

In the vicinity of the project area, the average broadband ambient underwater sound levels were measured at 114 dB re 1µPa between 100 Hz and 20 kHz (Slater, 2009). Peak spectral sound from industrial activity was noted below the 300 Hz frequency, with maximum levels of 110 dB re 1µPa noted in the 125 Hz band. In the 300 Hz to 5 kHz range, average levels ranged between 83–99 dB re 1µPa. Wind-driven wave sound dominated the background sound environment at approximately 5 kHz and above, and ambient sound levels flattened above 10 kHz.

Airborne sound levels at NBKB vary based on location but are estimated to average around 65 dBA (A-weighted decibels) in the residential and office park areas, with traffic sound ranging from 60–80 dBA during daytime hours (Cavanaugh and Tocci, 1998). The highest levels of airborne sound are produced along the waterfront and at the ordnance handling areas, where estimated sound levels range from 70–90 dBA and may peak at 99 dBA for short durations. These higher sound levels are produced by a combination of sound sources including heavy trucks, forklifts, cranes, marine vessels, mechanized tools and equipment, and other sound-generating industrial or military activities.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary noise attenuation piles [TNAP]), and cushion blocks. Bubble curtains create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. An unconfined bubble curtain may also consist of a stacked system, that is, a series of multiple rings placed at the bottom and at various elevations around the pile. Stacked systems may be more effective than non-stacked systems in areas with high current and deep water (Caltrans, 2009).

A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Caltrans, 2009).

An isolation casing is a hollow pipe that surrounds the pile, isolating it from the in-water work area. The casing is dewatered before pile driving. This device provides levels of sound attenuation similar to that of bubble curtains (Caltrans, 2009). Sound levels can be reduced by 8 to 14 dB. Cushion blocks consist of materials (*e.g.,* wood, nylon) placed atop piles during impact pile driving activities to reduce source levels. Typically sound reduction can range from 4 to a maximum of 26 dB.

Cofferdams are often used during construction for isolating the in-water work area, but may also be used as a sound attenuation device. Dewatered cofferdams may provide the highest levels of sound reduction of any attenuation device; however, they do not eliminate underwater sound because sound can be transmitted through the substrate (Caltrans, 2009). Cofferdams that are not dewatered provide very limited reduction in sound levels.

Both environmental conditions and the characteristics of the sound attenuation device may influence the effectiveness of the device. According to Caltrans (2009):

- In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.
- Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.
- Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.
- Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.
- Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results for bubble curtains (*e.g.,* WSF, 2009; WSDOT, 2008; USFWS, 2009; Caltrans, 2009). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted (Caltrans, 2009).

Sound Thresholds

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment might occur (NMFS, 2005b). To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical sound thresholds have been established. Current NMFS practice regarding exposure of marine mammals to sound is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (*i.e.,* injurious) harassment. Behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (*e.g.,* impact pile driving) and 120 dB rms for continuous sound (*e.g.,* vibratory pile driving), but below injurious thresholds. For airborne sound, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving would generate

underwater noise that potentially could result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. A practical sound propagation modeling technique was used by the Navy to estimate the range from the pile driving activity to various SPL thresholds in water. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.,* driven pile) is governed by a measured source level, minus the transmission loss of the energy as it dissipates with distance. The formula for underwater TL is:

$TL = 15 * \log_{10}(R_1/R_2)$, where

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). The propagation environment along the NBKB waterfront conforms to neither spherical nor cylindrical spreading; as the receiver moves away from the shoreline, the water increases in depth, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Since there is no available data regarding propagation loss along the NBKB waterfront, a practical spreading loss model was adopted as the most likely approximation of the sound propagation environment. Hydroacoustic monitoring results from the Navy's Test Pile Project (see 76 FR 38361; July 30, 2011) will be used, when available, to confirm the validity of the practical spreading model for estimating acoustic propagation in the project area. That project concluded on October 31, 2011.

Underwater Sound From Pile Driving—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated affects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action were evaluated. Sound levels associated with vibratory pile removal are assumed to be the same as those during vibratory installation (Caltrans, 2007)—which is likely a conservative assumption—and have been taken into consideration in the modeling analysis. Overall, studies which met the following parameters were considered: (1) Pile size and materials: Steel pipe piles (30–72 in diameter); (2) Hammer machinery: Vibratory and impact hammer; and (3) Physical environment: shallow depth (less than 100 ft [30 m]).

TABLE 3—UNDERWATER SPLS FROM MONITORED CONSTRUCTION ACTIVITIES USING IMPACT HAMMERS

Project and location	Pile size and type	Water depth	Measured SPLs
Eagle Harbor Maintenance Facility, WA	30-in (0.8 m) steel pipe pile	10 m (33 ft)	192 dB re 1 μPa (rms) at 10 m (33 ft).
Friday Harbor Ferry Terminal, WA	30-in steel pipe pile	10 m	196 dB re 1 μPa (rms) at 10 m.
Unknown, CA	36-in steel pipe pile	10 m	193 dB re 1 μPa (rms) at 10 m.
Mukilteo Test Piles, WA	36-in steel pipe pile	7.3 m (24 ft)	195 dB re 1 μPa (rms) at 10 m.
Anacortes Ferry, WA	36-in steel pipe pile	12.8 m (42 ft)	199 dB re 1 μPa (rms) at 10 m.
Carderock Pier, NBKB, WA	42-in steel pipe pile	14–22 m (48–70 ft)	195 dB re 1 μPa (rms) at 10 m.
Russian River, CA	48-in steel pipe pile	2 m (6.6 ft)	195 dB re 1 μPa (rms) at 10 m.
Unknown, CA	60-in cast-in-steel-shell	10 m	195 dB re 1 μPa (rms) at 10 m.
Richmond-San Rafael Bridge, CA	66-in steel pipe pile	4 m (13 ft)	195 dB re 1 μPa (rms) at 10 m.

Sources: WSDOT, 2005, 2008; Caltrans, 2007; Reyff, 2005; JASCO, 2005; Laughlin, 2005; Navy, 2009.

The tables presented here detail representative pile driving SPLs that have been recorded from similar construction activities in recent years. Due to the similarity of these actions and the Navy's proposed action, these values represent reasonable SPLs which could be anticipated, and which were used in the acoustic modeling and analysis. Table 3 represents SPLs that may be expected during pile installation using an impact hammer. Table 4 represents SPLs that may be expected during pile installation using a vibratory hammer.

TABLE 4—UNDERWATER SPLS FROM MONITORED CONSTRUCTION ACTIVITIES USING VIBRATORY HAMMERS

Project and location	Pile size and type	Water depth	Measured SPLs
Keystone Ferry Terminal, WA [1]	30-in (0.8 m) steel pipe pile	5 m (15 ft)	164 dB re 1 μPa (rms) at 10 m (33 ft).
Keystone Ferry Terminal, WA [1]	30-in steel pipe pile	8 m (28 ft)	165 dB re 1 μPa (rms) at 10 m.
Vashon Ferry Terminal, WA [2]	30-in steel pipe pile	6 m (20 ft)	165 dB re 1 μPa (rms) at 10 m.
Unknown, CA	36-in steel pipe pile	5 m	170 dB re 1 μPa (rms) at 10 m.
Unknown, CA	36-in steel pipe pile	5 m	175 dB re 1 μPa (rms) at 10 m.
Unknown, CA	72-in steel pipe pile	5 m	170 dB re 1 μPa (rms) at 10 m.
Unknown, CA	72-in steel pipe pile	5 m	180 dB re 1 μPa (rms) at 10 m.

Sources: Laughlin, 2010a; Laughlin, 2010b; Caltrans, 2007.

As described previously in this document, sound attenuation measures, including bubble curtains, can be employed during impact pile driving to reduce the high source pressures. For the wharf construction project, the Navy intends to employ sound reduction techniques during impact pile driving, including the use of sound attenuation systems (*e.g.,* bubble curtain). See ''Proposed Mitigation'', later in this document, for more details on the impact reduction and mitigation measures proposed. The calculations of the distances to the marine mammal sound thresholds were calculated for impact installation with the assumption of a 10 dB reduction in source levels from the use of sound attenuation devices, and the Navy used the mitigated distances for impact pile driving for all analysis in their application. The Navy will analyze data from the Test Pile Program to confirm the level of achieved sound attenuation from use of a bubble curtain or similar device using site-specific conditions.

All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 5. The Navy used source values of 185 dB for impact driving (the mean SPL of the values presented in Table 3, less 10 dB of sound attenuation from use of a bubble curtain or similar device) and 180 dB for vibratory driving (the worst-case value from Table 4). The 195 dB mean SPL of values presented in Table 3 was considered appropriate because it matched values from projects where larger-size pile was used and, in addition, matched the value obtained from the Carderock project, which was located at the NBKB waterfront and involved similar pile materials, water depth, and bottom type. The maximum value from Table 4 of 180 dB was deemed appropriate for vibratory driving because no data were available for 48-in and 60-in piles. As a result, the most conservative value was selected. Under likely construction scenarios, up to three vibratory drivers would operate simultaneously with one impact driver. Although radial distance and area associated with the zone ensonified to 160 dB (the behavioral harassment threshold for pulsed sounds, such as those produced by impact driving) are presented in Table 5, this zone would be subsumed by the 120 dB zone produced by vibratory driving. Thus, behavioral harassment of marine mammals associated with impact driving is not considered further here. Since the 160 dB threshold and the 120 dB threshold both indicate behavioral harassment, pile driving effects in the two zones are equivalent. Although such a day is not planned, if only the impact driver was operated on a given day, incidental take on that day would likely be lower because the area ensonified to levels producing Level B harassment would be smaller (although actual take would be determined by the numbers of marine mammals in the area on that day). The use of multiple vibratory rigs at the same time would result in a small additive effect with regard to produced SPLs; however, because the sound field produced by vibratory driving would be truncated by land in the Hood Canal, no increase in actual sound field produced would occur. There would be no overlap in the 190/180-dB sound fields produced by rigs operating simultaneously.

TABLE 5—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance	Area, km² (mi²)
Impact driving, pinniped injury (190 dB)	4.9 m (16.1 ft)	0.0001
Impact driving, cetacean injury (180 dB)	22 m (72.2 ft)	0.002 (0.0008)
Impact driving, disturbance (160 dB)[2]	724 m (2,375 ft)	1.65 (0.64)
Vibratory driving, pinniped injury (190 dB)	2.1 m (6.9 ft)	< 0.0001
Vibratory driving, cetacean injury (180 dB)	10 m (32.8 ft)	0.0003 (0.0001)
Vibratory driving, disturbance (120 dB)	13,800 m (45,276 ft)[3]	41.4 (15.98)

[1] SPLs used for calculations were: 185 dB for impact and 180 dB for vibratory driving.
[2] Area of 160-dB zone presented for reference. Estimated incidental take calculated on basis of larger 120-dB zone.
[3] Hood Canal average width at site is 2.4 km (1.5 mi), and is fetch limited from N to S at 20.3 km (12.6 mi). Calculated range (over 222 km) is greater than actual sound propagation through Hood Canal due to intervening land masses. 13.8 km (8.6 mi) is the greatest line-of-sight distance from pile driving locations unimpeded by land masses, which would block further propagation of sound.

Hood Canal does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120 dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Airborne Sound Propagation Formula—Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne SPLs that could result in Level B behavioral harassment. The appropriate airborne sound threshold for behavioral disturbance for all pinnipeds, except harbor seals, is 100 dB re 20 µPa rms (unweighted). For harbor seals, the threshold is 90 dB re 20 µPa rms (unweighted). A spherical spreading loss model, assuming average atmospheric conditions, was used to estimate the distance to the 100 dB and 90 dB re 20 µPa rms (unweighted) airborne thresholds. The formula for calculating spherical spreading loss is:

$TL = 20\log(R_1/R_2)$

TL = Transmission loss

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

Airborne Sound From Pile Installation—As was discussed for underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action, as described previously, were evaluated. Table 6 details representative pile driving activities that have occurred in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable SPLs which could be anticipated.

TABLE 6—AIRBORNE SPLS FROM SIMILAR CONSTRUCTION ACTIVITIES

Project & location	Pile size &type	Method	Water depth	Measured SPLs
Northstar Island, AK [1]	42-in (1.1 m) steel pipe pile ...	Impact	Approximately 12 m (40 ft)	97 dB re 20 μPa (rms) at 160 m (525 ft).
Keystone Ferry Terminal, WA [3].	30-in (0.8 m) steel pipe pile ...	Vibratory	Approximately 9 m (30 ft)	97 dB re 20 μPa (rms) at 13 m (40 ft).

Sources: Blackwell *et al.,* 2004; Laughlin, 2010b.

Based on in-situ recordings from similar construction activities, the maximum airborne sound levels that would result from impact and vibratory pile driving are estimated to be 97 dB rms re 20 μPa at 160 m and 97 dB rms re 20 μPa at 13 m, respectively (Blackwell *et al.,* 2004; Laughlin, 2010b). The distances to the airborne thresholds were calculated with the airborne transmission loss formula presented previously. The Navy has analyzed the combined sound field produced under the multi-rig scenario and calculated the radial distances to the 90 and 100 dB airborne thresholds as 361 m (1,184 ft) and 114 m (374 ft), respectively, equating to areas of 0.41 km^2 (0.16 mi^2) and 0.04 km^2 (0.02 mi^2), respectively. These distances would be significantly less for the vibratory driver alone, approximately 28 m (92 ft) and 9 m (30 ft), respectively.

All airborne distances are less than those calculated for underwater sound thresholds. Protective measures would be in place out to the distances calculated for the underwater thresholds, and the distances for the airborne thresholds would be covered fully by mitigation and monitoring measures in place for underwater sound thresholds. Construction sound associated with the project would not extend beyond the buffer zone for underwater sound that would be established to protect pinnipeds. No haul-outs or rookeries are located within the airborne harassment radii. See Figure 6–2 of the Navy's application for a depiction of the size of areas in which each airborne sound threshold is predicted to occur at the project area due to pile driving.

Description of Marine Mammals in the Area of the Specified Activity

There are six marine mammal species, three cetaceans and three pinnipeds, which may inhabit or transit through the waters nearby NBKB in the Hood Canal. These include the transient killer whale, harbor porpoise, Dall's porpoise, Steller sea lion, California sea lion, and the harbor seal. While the Southern Resident killer whale is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in over 15 years, and therefore was excluded from further analysis. The Steller sea lion is the only marine mammal that occurs within the Hood Canal which is listed under the ESA; the Eastern DPS is listed as threatened. All marine mammal species are protected under the MMPA. This section summarizes the population status and abundance of these species, followed by detailed life history information. Table 7 lists the marine mammal species that occur in the vicinity of NBKB and their estimated densities within the project area during the proposed timeframe. Daily maximum abundance data only is presented for sea lions because sightings data have no defined survey area.

TABLE 7—MARINE MAMMALS PRESENT IN THE HOOD CANAL IN THE VICINITY OF NBKB

Species	Stock abundance [1]	Relative occurrence in Hood Canal	Season of occurrence	Density during in-water work season [3] (individuals/km^2)
Steller sea lion				
Eastern U.S.DPS	58,334–72,223 [2]	Occasional presence	Fall to late spring (Oct to mid-April).	[3] 1.2
California sea lion				
U.S. Stock	238,000	Common	Fall to late spring (Aug to early June).	[3] 26.2
Harbor seal				
WA inland waters stock	14,612 (CV = 0.15).	Common	Year-round; resident species in Hood Canal.	[4] 1.31
Killer whale				
West Coast transient stock ...	354	Rare to occasional presence	Year-round	[5] 0.038
Dall's porpoise				
CA/OR/WA stock	42,000 (CV = 0.33).	Rare to occasional presence	Year-round	[6] 0.014
Harbor porpoise				
WA inland waters stock	10,682 (CV = 0.38).	Possible regular to occasional presence.	Year-round	[7] 0.250

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

[2] Range calculated on basis of total pup counts 2006–2009 and extrapolation factors derived from vital rate parameters estimated for an increasing population.

[3] Density for sea lions is not calculated due to the lack of a defined survey area for sightings data. Abundance calculated as the average of the maximum number of individuals present during shore-based surveys at NBKB waterfront during the in-water construction season.

[4] Jeffries *et al.,* 2003; Huber *et al.,* 2001.

[5] Density calculated as the maximum number of individuals present at a given time during occurrences of killer whales at Hood Canal in 2003 and 2005 (London 2006) divided by the area of Hood Canal.

[6] Density calculated from number of individuals observed in 18 vessel-based surveys of NBKB waterfront area (Tannenbaum *et al.,* 2009, 2011).

[7] Density calculated from number of individuals observed during vessel-based surveys conducted during Test Pile Program and corrected for detectability (Navy, in prep.).

Steller Sea Lion

Species Description—Steller sea lions are the largest members of the Otariid (eared seal) family. Steller sea lions show marked sexual dimorphism, in which adult males are noticeably larger and have distinct coloration patterns from females. Males average approximately 1,500 lb (680 kg) and 10 ft (3 m) in length; females average about 700 lb (318 kg) and 8 ft (2.4 m) in length. Adult females have a tawny to silver-colored pelt. Males are characterized by dark, dense fur around their necks, giving a mane-like appearance, and light tawny coloring over the rest of their body (NMFS, 2008a). Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific Ocean rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California. The population is divided into the Western and the Eastern Distinct Population Segments (DPSs) at 144°W (Cape Suckling, Alaska). The Western DPS includes Steller sea lions that reside in the central and western Gulf of Alaska, Aleutian Islands, as well as those that inhabit coastal waters and breed in Asia (*e.g.,* Japan and Russia). The Eastern DPS extends from California to Alaska, including the Gulf of Alaska.

Status—Steller sea lions were listed as threatened range-wide under the ESA in 1990. After division into two stocks, the western stock was listed as endangered under the ESA in 1997 and the eastern stock remained classified as threatened. Animals found in the project area are from the eastern stock (NMFS, 1997a; Loughlin, 2002; Angliss and Outlaw, 2005). The eastern stock breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no rookeries located in Washington. A final revised species recovery plan addresses both stocks (NMFS, 2008a).

Critical habitat was designated for Steller sea lions in 1993. Critical habitat is associated with breeding and haul-out sites in Alaska, California, and Oregon, and includes so-called 'aquatic zones' that extend 3,000 ft (0.9 km) seaward in state and federally managed waters from the baseline or basepoint of each major rookery in Oregon and California (NMFS, 2008a). Three major rookery sites in Oregon (Rogue Reef, Pyramid Rock, and Long Brown Rock and Seal Rock on Orford Reef at Cape Blanco) and three rookery sites in California (Ano Nuevo I, Southeast Farallon I, and Sugarloaf Island and Cape Mendocino) are designated critical habitat (NMFS, 1993). There is no designated critical habitat within the project area.

Limiting factors for recovery of Steller sea lions include reduced food availability, possibly resulting from competition with commercial fisheries; incidental take and intentional kills during commercial fish harvests; subsistence take; entanglement in marine debris; disease; pollution; and harassment. The change in food availability, associated with lowered nutritional status of females and consequent reduced juvenile recruitment, may be the primary cause of the decline (60 FR 51968). Declines of this species in the early 1980s were associated with exceedingly low juvenile survivorship, whereas declines in the 1990s were associated with disproportionately low fecundity (Holmes and York, 2003). Steller sea lions are also sensitive to disturbance at rookeries (during pupping and breeding) and haul-out sites.

The abundance of the Eastern DPS of Steller sea lions is increasing throughout the northern portion of its range (Southeast Alaska and British Columbia), and stable or increasing slowly in the central portion (Oregon through central California). In the southern end of its range (Channel Islands in southern California), it has declined significantly since the late 1930s, and several rookeries and haul-outs have been abandoned. Changes in ocean conditions (*e.g.,* warmer temperatures) may be contributing to habitat changes that favor California sea lions over Steller sea lions in the southern portion of the Steller's range (NMFS, 2007).

The eastern stock was estimated by NMFS in the Recovery Plan for the Steller Sea Lion to number between 45,000 to 51,000 animals (NMFS, 2008a). This stock has been increasing approximately three percent per year over the entire range since the late 1970s (NMFS, 2008a; Pitcher *et al.,* 2007). The most recent population estimate for the eastern stock is a minimum of 52,847 individuals; this estimate is not corrected for animals at sea. Actual population is estimated to be within the range 58,334 to 72,223 (Allen and Angliss, 2010). The most recent minimum count for Steller sea lions in Oregon and Washington was 5,813 in 2002 (Pitcher *et al.,* 2007; Allen and Angliss, 2010).

The eastern U.S. stock of Steller sea lion is currently listed as threatened under the ESA, and is therefore designated as depleted and classified as a strategic stock under the MMPA. However, the eastern stock of Steller sea lions has been considered a potential candidate for removal from listing under the ESA by the Steller sea lion recovery team and NMFS (NMFS, 2008), based on its annual rate of increase of approximately three percent since the mid-1970s. Although the stock size has increased, the status of this stock relative to its Optimum Sustainable Population (OSP) size is unknown. The overall annual rate of increase of 3.1 percent throughout most of the range (Oregon to southeastern Alaska) of the eastern stock has been consistent and long-term, and may indicate that this stock is reaching OSP size (Pitcher *et al.,* 2007).

Behavior and Ecology—Steller sea lions forage near shore and in pelagic waters. They are capable of traveling long distances in a season and can dive to approximately 1,300 ft (400 m) in depth. They also use terrestrial habitat as haul-out sites for periods of rest, molting, and as rookeries for mating and pupping during the breeding season. At sea, they are often seen alone or in small groups, but may gather in large rafts at the surface near rookeries and haul-outs. Steller sea lions prefer the colder temperate to sub-arctic waters of the North Pacific Ocean. Haul-outs and rookeries usually consist of beaches (gravel, rocky or sand), ledges, and rocky reefs. In the Bering and Okhotsk Seas, sea lions may also haul-out on sea ice, but this is considered atypical behavior (NOAA, 2010a).

Steller sea lions are gregarious animals that often travel or haul out in large groups of up to 45 individuals (Keple, 2002). At sea, groups usually consist of female and subadult males; adult males are usually solitary while at sea (Loughlin, 2002). In the Pacific Northwest, breeding rookeries are located in British Columbia, Oregon, and northern California. Steller sea lions form large rookeries during late spring when adult males arrive and establish territories (Pitcher and Calkins, 1981). Large males aggressively defend territories while non-breeding males remain at peripheral sites or haul-outs. Females arrive soon after and give birth. Most births occur from mid-May through mid-July, and breeding takes

place shortly thereafter. Most pups are weaned within a year. Non-breeding individuals may not return to rookeries during the breeding season but remain at other coastal haul-outs (Scordino, 2006).

Steller sea lions are opportunistic predators, feeding primarily on fish and cephalopods, and their diet varies geographically and seasonally (Bigg, 1985; Merrick *et al.,* 1997; Bredesen *et al.,* 2006; Guenette *et al.,* 2006). Foraging habitat is primarily shallow, nearshore and continental shelf waters; freshwater rivers; and also deep waters (Reeves *et al.,* 2008; Scordino, 2010). Steller sea lions occupy major winter haul-out sites on the coast of Vancouver Island in the Strait of Juan de Fuca and the Georgia Basin (Bigg, 1985; Olesiuk, 2008); the closest breeding rookery to the project area is at Carmanah Point near the western entrance to the Strait of Juan de Fuca. There are no known breeding rookeries in Washington (NMFS, 1992; Angliss and Outlaw, 2005) but Eastern stock Steller sea lions are present year-round along the outer coast of Washington at four major haul-out sites (NMFS, 2008a). Both sexes are present in Washington waters; these animals are likely immature or non-breeding adults from rookeries in other areas (NMFS, 2008a). In Washington, Steller sea lions primarily occur at haul-out sites along the outer coast from the Columbia River to Cape Flattery. In inland waters, Steller sea lions use haul-out sites along the Vancouver Island coastline of the Strait of Juan de Fuca (Jeffries *et al.,* 2000; COSEWIC, 2003; Olesiuk, 2008). Numbers vary seasonally in Washington waters with peak numbers present during the fall and winter months (Jeffries *et al.,* 2000). The highest breeding season Steller sea lion count at Washington haul-out sites was 847 individuals during the period from 1978 to 2001 (Pitcher *et al.,* 2007). Non-breeding season surveys of Washington haul-out sites reported as many as 1,458 individuals between 1980 and 2001 (NMFS, 2008a).

Steller sea lions are occasionally present at the Toliva Shoals haul-out site in south Puget Sound (Jeffries *et al.,* 2000) and a rock three miles south of Marrowstone Island (NMFS, 2010). Fifteen Steller sea lions have been observed using this haul-out site. At NBKB, Steller sea lions have been observed hauled out on submarines at Delta Pier on several occasions from 2008 through 2011 during fall through spring months (October to April) (Navy 2010). Other potential haul-out sites may include isolated islands, rocky shorelines, jetties, buoys, rafts, and floats (Jeffries *et al.,* 2000). Steller sea lions likely utilize foraging habitats in Hood Canal similar to those of the California sea lion and harbor seal, which include marine nearshore and deeper water habitats.

Acoustics—Like all pinnipeds, the Steller sea lion is amphibious; while all foraging activity takes place in the water, breeding behavior is carried out on land in coastal rookeries (Mulsow and Reichmuth 2008). On land, territorial male Steller sea lions regularly use loud, relatively low-frequency calls/roars to establish breeding territories (Schusterman *et al.,* 1970; Loughlin *et al.,* 1987). The calls of females range from 0.03 to 3 kHz, with peak frequencies from 0.15 to 1 kHz; typical duration is 1.0 to 1.5 sec (Campbell *et al.,* 2002). Pups also produce bleating sounds. Individually distinct vocalizations exchanged between mothers and pups are thought to be the main modality by which reunion occurs when mothers return to crowded rookeries following foraging at sea (Mulsow and Reichmuth, 2008).

Mulsow and Reichmuth (2008) measured the unmasked airborne hearing sensitivity of one male Steller sea lion. The range of best hearing sensitivity was between 5 and 14 kHz. Maximum sensitivity was found at 10 kHz, where the subject had a mean threshold of 7 dB. The underwater hearing threshold of a male Steller sea lion was significantly different from that of a female. The peak sensitivity range for the male was from 1 to 16 kHz, with maximum sensitivity (77 dB re: 1μPa-m) at 1 kHz. The range of best hearing for the female was from 16 to above 25 kHz, with maximum sensitivity (73 dB re: 1μPa-m) at 25 kHz. However, because of the small number of animals tested, the findings could not be attributed to either individual differences in sensitivity or sexual dimorphism (Kastelein *et al.,* 2005).

California Sea Lion

Species Description—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus,* includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.,* 2007). The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around five years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

Status—The U.S. stock of California sea lions is estimated at 238,000 and the minimum population size of this stock is 141,842 individuals (Carretta *et al.,* 2007). These numbers are from counts during the 2001 breeding season of animals that were ashore at the four major rookeries in southern California and at haul-out sites north to the Oregon/California border. Sea lions that were at-sea or hauled-out at other locations were not counted (Carretta *et al.,* 2007). The stock has likely reached its carrying capacity and, even though current total human-caused mortality is unknown (due to a lack of observer coverage in the California set gillnet fishery that historically has been the largest source of human-caused mortalities), California sea lions are not considered a strategic stock under the MMPA because total human-caused mortality is still likely to be less than the potential biological removal (PBR). An estimated 3,000 to 5,000 California sea lions migrate to waters of Washington and British Columbia during the non-breeding season from September to May (Jeffries *et al.,* 2000). Peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.,* 2000).

Distribution—The geographic distribution of California sea lions includes a breeding range from Baja California, Mexico to southern California. During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 mi (50 km) from the islands (Bonnell *et al.,* 1983). The primary rookeries are located on the California Channel Islands of San Miguel, San Nicolas, Santa Barbara, and San Clemente (Le Boeuf and Bonnell, 1980; Bonnell and Dailey, 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford, 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.,* 2008; Maniscalco *et al.,* 2004). In the non-breeding season, an estimated 3,000–5,000 adult and sub-adult males migrate northward along the coast to central and northern California, Oregon,

Washington, and Vancouver Island from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). Along their migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.,* 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al.,* 1983).

California sea lions are present in Hood Canal during much of the year with the exception of mid-June through August, and occur regularly in the vicinity of the project site, as observed during Navy waterfront surveys conducted at NBKB from April 2008 through June 2010 (Navy, 2010). They are known to utilize man-made structures such as piers, jetties, offshore buoys, log booms, and oil platforms (Riedman, 1990), and are often seen rafted off of river mouths (Jeffries *et al.,* 2000). Although there are no regular California sea lion haul-outs known within the Hood Canal (Jeffries *et al.,* 2000), they are frequently observed hauled out at several opportune areas at NBKB (*e.g.,* submarines, floating security fence, barges). As many as 58 California sea lions have been observed hauled out together at NBKB (Agness and Tannenbaum, 2009a; Tannenbaum *et al.,* 2009a; Walters, 2009). California sea lions have also been observed swimming in the Hood Canal in the vicinity of the project area on several occasions and likely forage in both nearshore marine and inland marine deeper waters (DoN, 2001a).

Behavior and Ecology—California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.,* 1981; Roffe and Mate, 1984; Antonelis *et al.,* 1990; Lowry *et al.,* 1991). In the Puget Sound region, they feed primarily on fish such as Pacific hake (*Merluccius productus*), walleye pollock (*Theragra chalcogramma*), Pacific herring (*Clupea pallasii*), and spiny dogfish (*Squalus acanthias*) (Calambokidis and Baird, 1994). In some locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London, 2006). Sexual maturity occurs at around four to five years of age for California sea lions (Heath, 2002). California sea lions are gregarious during the breeding season and social on land during other times.

Acoustics—On land, California sea lions make incessant, raucous barking sounds; these have most of their energy at less than 2 kHz (Schusterman *et al.,* 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman, 1977). Females produce barks, squeals, belches, and growls in the frequency range of 0.25–5 kHz, while pups make bleating sounds at 0.25–6 kHz. California sea lions produce two types of underwater sounds: clicks (or short-duration sound pulses) and barks (Schusterman *et al.,* 1966, 1967; Schusterman and Baillet, 1969). All underwater sounds have most of their energy below 4 kHz (Schusterman *et al.,* 1967).

The range of maximal hearing sensitivity underwater is between 1–28 kHz (Schusterman *et al.,* 1972). Functional underwater high frequency hearing limits are between 35–40 kHz, with peak sensitivities from 15–30 kHz (Schusterman *et al.,* 1972). The California sea lion shows relatively poor hearing at frequencies below 1 kHz (Kastak and Schusterman, 1998). Peak hearing sensitivities in air are shifted to lower frequencies; the effective upper hearing limit is approximately 36 kHz (Schusterman, 1974). The best range of sound detection is from 2–16 kHz (Schusterman, 1974). Kastak and Schusterman (2002) determined that hearing sensitivity generally worsens with depth—hearing thresholds were lower in shallow water, except at the highest frequency tested (35 kHz), where this trend was reversed. Octave band sound levels of 65–70 dB above the animal's threshold produced an average temporary threshold shift (TTS; discussed later in ''Potential Effects of the Specified Activity on Marine Mammals'') of 4.9 dB in the California sea lion (Kastak *et al.,* 1999).

Harbor Seal

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (*i.e.,* birthing) (Temte, 1986), movement patterns (Jeffries, 1985; Brown, 1988), pollutant loads (Calambokidis *et al.,* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng, 1988). The three distinct stocks are: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2007). The inland waters of Washington stock is the only stock that is expected to occur within the project area.

The average weight for adult seals is about 180 lb (82 kg) and males are slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS, 2008c).

Status—Estimated population numbers for the inland waters of Washington, including the Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery, are 14,612 individuals (Carretta *et al.,* 2007). The minimum population is 12,844 individuals. The harbor seal is the only species of marine mammal that is consistently abundant and considered resident in the Hood Canal (Jeffries *et al.,* 2003). The population of harbor seals in Hood Canal is a closed population, meaning that they do not have much movement outside of Hood Canal (London, 2006). The abundance of harbor seals in Hood canal has stabilized, and the population may have reached its carrying capacity in the mid-1990s with an approximate abundance of 1,000 harbor seals (Jeffries *et al.,* 2003).

Harbor seals are not considered to be depleted under the MMPA or listed under the ESA. Human-caused mortality relative to PBR is unknown, but it is considered to be small relative to the stock size. Therefore, the Washington Inland Waters stock of harbor seals is not classified as a strategic stock.

Distribution—Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjorge, 2002). Haul-out areas can include intertidal and subtidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and man-made structures such as log booms, docks, and recreational floats (Wilson, 1978; Prescott, 1982; Schneider and Payne, 1983; Gilber and Guldager, 1998; Jeffries *et al.,* 2000). Human disturbance can affect haul-out choice (Harris *et al.,* 2003).

Harbor seals occur throughout Hood Canal and are seen relatively commonly in the area. They are year-round, non-migratory residents, and pup (*i.e.,* give birth) in Hood Canal. Surveys in the Hood Canal from the mid-1970s to 2000 show a fairly stable population between 600–1,200 seals (Jeffries *et al.,* 2003). Harbor seals have been observed swimming in the waters along NBKB in every month of surveys conducted from 2007–2010 (Agness and Tannenbaum,

2009b; Tannenbaum *et al.,* 2009b). On the NBKB waterfront, harbor seals have not been observed hauling out in the intertidal zone, but have been observed hauled-out on man-made structures such as the floating security fence, buoys, barges, marine vessels, and logs (Agness and Tannebaum, 2009a; Tannenbaum *et al.,* 2009a). The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths (see Figure 4–1 of the Navy's application), with the closest haul-out area to the project area being ten miles (16 km) southwest of NBKB at Dosewallips River mouth, outside the potential area of effect for this project (London, 2006).

Behavior and Ecology—Harbor seals are typically seen in small groups resting on tidal reefs, boulders, mudflats, man-made structures, and sandbars. Harbor seals are opportunistic feeders that adjust their patterns to take advantage of locally and seasonally abundant prey (Payne and Selzer 1989; Baird 2001; Bjørge 2002). The harbor seal diet consists of fish and invertebrates (Bigg, 1981; Roffe and Mate, 1984; Orr *et al.,* 2004). Although harbor seals in the Pacific Northwest are common in inshore and estuarine waters, they primarily feed at sea (Orr *et al.,* 2004) during high tide. Researchers have found that they complete both shallow and deep dives during hunting depending on the availability of prey (Tollit *et al.,* 1997). Their diet in Puget Sound consists of many of the prey resources that are present in the nearshore and deeper waters of NBKB, including hake, herring and adult and out-migrating juvenile salmonids. Harbor seals in Hood Canal are known to feed on returning adult salmon, including ESA-threatened summer-run chum (*Oncorhynchus keta*). Over a 5-year study of harbor seal predation in the Hood Canal, the average percent escapement of summer-run chum consumed was eight percent (London, 2006).

Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. In coastal and inland regions of Washington, pups are born from April through January. Pups are generally born earlier in the coastal areas and later in the Puget Sound/Hood Canal region (Calambokidis and Jeffries, 1991; Jeffries *et al.,* 2000). Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.,* 1999).

Acoustics—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.,* 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg, 1981; Thomson and Richardson, 1995). Harbor seals hear nearly as well in air as underwater and had lower thresholds than California sea lions (Kastak and Schusterman, 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65.4 dB re 20 µPa for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson, 1995; Terhune and Turnbull, 1995; Wolski *et al.,* 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusteman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.,* 2007) and can detect sound levels as weak as 60–85 dB re 1 µPa within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

Killer Whale

Species Description—Killer whales are members of the Delphinid family and are the most widely distributed cetacean species in the world. Killer whales have a distinctive color pattern, with black dorsal and white ventral portions. They also have a conspicuous white patch above and behind the eye and a highly variable gray or white saddle area behind the dorsal fin. The species shows considerable sexual dimorphism. Adult males develop larger pectoral flippers, dorsal fins, tail flukes, and girths than females. Male adult killer whales can reach up to 32 ft (9.8 m) in length and weigh nearly 22,000 lb (10,000 kg); females reach 28 ft (8.5 m) in length and weigh up to 16,500 lb (7,500 kg).

Based on appearance, feeding habits, vocalizations, social structure, and distribution and movement patterns there are three types of populations of killer whales (Wiles, 2004; NMFS, 2005). The three distinct forms or types of killer whales recognized in the North Pacific Ocean are: (1) Resident, (2) Transient, and (3) Offshore. The resident and transient populations have been divided further into different subpopulations based mainly on genetic analyses and distribution; not enough is known about the offshore whales to divide them into subpopulations (Wiles, 2004). Only transient killer whales are known from the project area.

Transient killer whales occur throughout the eastern North Pacific, and have primarily been studied in coastal waters. Their geographical range overlaps that of the resident and offshore killer whales. The dorsal fin of transient whales tends to be more erect (straighter at the tip) than those of resident and offshore whales (Ford and Ellis, 1999; Ford *et al.,* 2000). Saddle patch pigmentation of transient killer whales is restricted to two patterns, and never has the large areas of black pigmentation intruding into the white of the saddle patch that is seen in resident and offshore types. Transient type whales are often found in long-term stable social units that tend to be smaller than resident social groups (*e.g.,* fewer than ten whales); these social units do not seem as permanent as matrilines are in resident type whales. Transient killer whales feed nearly exclusively on marine mammals (Ford and Ellis, 1999), whereas resident whales primarily eat fish. Offshore whales are presumed to feed primarily on fish, and have been documented feeding on sharks.

Within the transient type, association data (Ford *et al.,* 1994; Ford and Ellis, 1999; Matkin *et al.,* 1999), acoustic data (Saulitis, 1993; Ford and Ellis, 1999) and genetic data (Hoelzel *et al.,* 1998, 2002; Barrett-Lennard, 2000) confirms that three communities of transient whales exist and represent three discrete populations: (1) Gulf of Alaska, Aleutian Islands, and Bering Sea transients, (2) AT1 transients (Prince William Sound, AK; listed as depleted under the MMPA), and (3) West Coast transients. Among the genetically distinct assemblages of transient killer whales in the northeastern Pacific, only the West Coast transient stock, which occurs from southern California to southeastern Alaska, may occur in the project area.

Status—The West Coast transient stock is a trans-boundary stock, with minimum counts for the population of transient killer whales coming from various photographic datasets. Combining these counts of cataloged transient whales gives a minimum number of 354 individuals for the West Coast transient stock (Allen and Angliss,

2010). However, the number in Washington waters at any one time is probably fewer than twenty individuals (Wiles, 2004). The West Coast transient killer whale stock is not designated as depleted under the MMPA or listed under the ESA. The estimated annual level of human-caused mortality and serious injury does not exceed the PBR. Therefore, the West Coast Transient stock of killer whales is not classified as a strategic stock. Population trends and status of this stock relative to its Optimum Sustainable Population (OSP) level are currently unknown.

Distribution—The geographical range of transient killer whales includes the northeast Pacific, with preference for coastal waters of southern Alaska and British Columbia (Krahn *et al.,* 2002). Transient killer whales in the eastern North Pacific spend most of their time along the outer coast, but visit Hood Canal and the Puget Sound in search of harbor seals, sea lions, and other prey. Transient occurrence in inland waters appears to peak during August and September (Morton, 1990; Baird and Dill, 1995; Ford and Ellis, 1999) which is the peak time for harbor seal pupping, weaning, and post-weaning (Baird and Dill, 1995). In 2003 and 2005, small groups of transient killer whales (eleven and six individuals, respectively) visited Hood Canal to feed on harbor seals and remained in the area for significant periods of time (59 and 172 days, respectively) between the months of January and July.

Behavior and Ecology—Transient killer whales show greater variability in habitat use, with some groups spending most of their time foraging in shallow waters close to shore while others hunt almost entirely in open water (Felleman *et al.,* 1991; Baird and Dill, 1995; Matkin and Saulitis, 1997). Transient killer whales feed on marine mammals and some seabirds, but apparently no fish (Morton, 1990; Baird and Dill, 1996; Ford *et al.,* 1998; Ford and Ellis, 1999; Ford *et al.,* 2005). While present in Hood Canal in 2003 and 2005, transient killer whales preyed on harbor seals in the subtidal zone of the nearshore marine and inland marine deeper water habitats (London, 2006). Other observations of foraging transient killer whales indicate they prefer to forage on pinnipeds in shallow, protected waters (Heimlich-Boran, 1988; Saulitis *et al.,* 2000). Transient killer whales travel in small, matrilineal groups, but they typically contain fewer than ten animals and their social organization generally is more flexible than that of resident killer whales (Morton, 1990, Ford and Ellis, 1999). These differences in social organization probably relate to differences in foraging (Baird and Whitehead, 2000). There is no information on the reproductive behavior of killer whales in this area.

Acoustics—Killer whales produce a wide variety of clicks and whistles, but most of their sounds are pulsed, with frequencies ranging from 0.5–25 kHz (dominant frequency range: 1–6 kHz) (Thomson and Richardson, 1995; Richardson *et al.,* 1995). Source levels of echolocation signals range between 195–224 dB re 1 μPa-m peak-to-peak (p-p), dominant frequencies range from 20–60 kHz, with durations of about 0.1 s (Au *et al.,* 2004). Source levels associated with social sounds have been calculated to range between 131–168 dB re 1 μPa-m and vary with vocalization type (Veirs, 2004).

Both behavioral and auditory brainstem response techniques indicate killer whales can hear in a frequency range of 1–100 kHz and are most sensitive at 20 kHz. This is one of the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.,* 1999).

Dall's Porpoise

Species Description—Dall's porpoises are members of the Phocoenid (porpoise) family and are common in the North Pacific Ocean. They can reach a maximum length of just under 8 ft (2.4 m) and weigh up to 480 lb (218 kg). Males are slightly larger and thicker than females, which reach lengths of just under 7 ft (2.1 m) long. The body of Dall's porpoises is a very dark gray or black in coloration with variable contrasting white thoracic panels and white 'frosting' on the dorsal fin and tail that distinguish them from other cetacean species. These markings and colorations vary with geographic region and life stage, with adults having more distinct patterns.

Based on NMFS stock assessment reports, Dall's porpoises within the Pacific U.S. Exclusive Economic Zone are divided into two discrete, noncontiguous areas: (1) waters off California, Oregon, and Washington, and (2) Alaskan waters (Carretta *et al.,* 2008). Only individuals from the CA/OR/WA stock may occur within the project area.

Status—The NMFS population estimate, recently updated in 2010 for the CA/OR/WA stock, is 42,000 (CV = 0.33) which is based on vessel line transect surveys by Barlow (2010) and Forney (2007). The minimum population is considered to be 32,106. Additional numbers of Dall's porpoises occur in the inland waters of Washington, but the most recent estimate was obtained in 1996 (900 animals; CV = 0.40; Calambokidis *et al.,* 1997) and is not included in the overall estimate of abundance for this stock due to the need for more up-to-date information. Dall's porpoise are not listed as depleted under the MMPA or listed under the ESA. The average annual human-caused mortality is estimated to be less than the PBR, and therefore the stock is not classified as a strategic stock under the MMPA. The status of Dall's porpoises in California, Oregon and Washington relative to OSP is not known, and there are insufficient data to evaluate potential trends in abundance.

Distribution—The Dall's porpoise is found from northern Baja California, Mexico, north to the northern Bering Sea and south to southern Japan (Jefferson *et al.,* 1993). The species is only common between 32–62 °N in the eastern North Pacific (Morejohn, 1979; Houck and Jefferson, 1999). North-south movements in California, Oregon, and Washington have been suggested. Dall's porpoises shift their distribution southward during cooler-water periods (Forney and Barlow, 1998). Norris and Prescott (1961) reported finding Dall's porpoises in southern California waters only in the winter, generally when the water temperature was less than 15 °C (59 °F). Seasonal movements have also been noted off Oregon and Washington, where higher densities of Dall's porpoises were sighted offshore in winter and spring and inshore in summer and fall (Green *et al.,* 1992).

In Washington, they are most abundant in offshore waters. They are year-round residents in Washington (Green *et al.,* 1992), but their distribution is highly variable between years, likely due to changes in oceanographic conditions (Forney and Barlow, 1998). Dall's porpoises are observed throughout the year in the Puget Sound north of Seattle (Osborne *et al.,* 1998) and are seen occasionally in southern Puget Sound. Dall's porpoises may also occasionally occur in Hood Canal (Jeffries 2006, personal communication). Nearshore habitats used by Dall's porpoises could include the marine habitats found in the inland marine waters of the Hood Canal. A Dall's porpoise was observed in the deeper water at NBKB in summer 2008 (Tannenbaum *et al.,* 2009a).

Behavior and Ecology—Dall's porpoises can be opportunistic feeders but primarily consume schooling forage fish. They are known to eat squid, crustaceans, and fishes such as blackbelly eelpout (*Lycodopsis pacifica*), herring, pollock, hake, and Pacific sandlance (*Ammodytes hexapterus*) (Walker *et al.,* 1998).

Groups of Dall's porpoises generally include fewer than ten individuals and are fluid, probably aggregating for feeding (Jefferson, 1990, 1991; Houck and Jefferson, 1999). Dall's porpoises become sexually mature at three and a half to eight years of age (Houck and Jefferson, 1999) and give birth to a single calf after ten to twelve months. Breeding and calving typically occurs in the spring and summer (Angell and Balcomb, 1982). In the North Pacific, there is a strong summer calving peak from early June through August (Ferrero and Walker, 1999), and a smaller peak in March (Jefferson, 1989). Resident Dall's porpoises breed in Puget Sound from August to September.

Acoustics—Only short duration pulsed sounds have been recorded for Dall's porpoises (Houck and Jefferson, 1999); this species apparently does not whistle often (Richardson *et al.,* 1995). Dall's porpoises produce short duration (50–1,500 µs), high-frequency, narrow band clicks, with peak energies between 120–160 kHz (Jefferson, 1988). There is no published data on the hearing abilities of this species.

Harbor Porpoise

Species Description—Harbor porpoises belong to the Phocoenid (porpoise) family and are found extensively along the Pacific U.S. coast. Harbor porpoises are small, with males reaching average lengths of approximately 5 ft (1.5 m); Females are slightly larger with an average length of 5.5 ft (1.7 m). The average adult harbor porpoise weighs between 135–170 lb (61–77 kg). Harbor porpoises have a dark grey coloration on their backs, with their belly and throats white. They have a dark grey chin patch and intermediate shades of grey along their sides.

Recent preliminary genetic analyses of samples ranging from Monterey, CA to Vancouver Island, BC indicate that there is small-scale subdivision within the U.S. portion of this range (Chivers *et al.,* 2002). Although geographic structure exists along an almost continuous distribution of harbor porpoises from California to Alaska, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. Nevertheless, based on genetic data and density discontinuities identified from aerial surveys, NMFS identifies eight stocks in the Northeast Pacific Ocean. Pacific coast harbor porpoise stocks include: (1) Monterey Bay, (2) San Francisco-Russian River, (3) northern California/southern Oregon, (4) Oregon/Washington coastal, (5) inland Washington, (6) Southeast Alaska, (7) Gulf of Alaska, and (8) Bering Sea. Only individuals from the Washington Inland Waters stock may occur in the project area.

Status—Aerial surveys of the inland waters of Washington and southern British Columbia were conducted during August of 2002 and 2003 (J. Laake, unpubl. data). These aerial surveys included the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia, which includes waters inhabited by the Washington Inland Waters stock of harbor porpoises as well as harbor porpoises from British Columbia. An average of the 2002 and 2003 estimates of abundance in U.S. waters resulted in an uncorrected abundance of 3,123 (CV= 0.10) harbor porpoises in Washington inland waters (J. Laake, unpubl. data). When corrected for availability and perception bias, the estimated abundance for the Washington Inland Waters stock of harbor porpoise is 10,682 (CV = 0.38) animals (Carretta *et al.,* 2008). The minimum population estimate is 7,841. Harbor porpoise are not listed as depleted under the MMPA or listed under the ESA. Based on currently available data, the total level of human-caused mortality is not known to exceed the PBR. Therefore, the Washington Inland Waters harbor porpoise stock is not classified as strategic. The status of this stock relative to its OSP level and population trends is unknown. Although long-term harbor porpoise sightings in southern Puget Sound have declined since the 1940s, sightings have increased in Puget Sound and northern Hood Canal in recent years and are now considered to regularly occur year-round in these waters (Calambokidis 2010, pers. comm). This may represent a return to historical conditions, when harbor porpoises were considered one of the most common cetaceans in Puget Sound (Scheffer and Slipp 1948).

Distribution—Harbor porpoises are generally found in cool temperate to subarctic waters over the continental shelf in both the North Atlantic and North Pacific (Read 1999). This species is seldom found in waters warmer than 17 °C (63 °F; Read 1999) or south of Point Conception (Hubbs 1960; Barlow and Hanan 1995). Harbor porpoises can be found year-round primarily in the shallow coastal waters of harbors, bays, and river mouths (Green *et al.,* 1992). Along the Pacific coast, harbor porpoises occur from Monterey Bay, California to the Aleutian Islands and west to Japan (Reeves *et al.,* 2002). Harbor porpoises are known to occur in Puget Sound year round (Osmek *et al.,* 1996, 1998; Carretta *et al.,* 2007), and harbor porpoise observations in northern Hood Canal have increased in recent years (Calambokidis 2010, pers. comm.). Prior to recent construction projects conducted by the Navy at NBKB, harbor porpoises were considered as likely occurring only occasionally in the project area. A single harbor porpoise had been sighted in deeper water at NBKB during 2010 field observations (SAIC, 2010). However, while implementing monitoring plans for work conducted from July-October, 2011, the Navy recorded multiple sightings of harbor porpoise in the deeper waters of the project area. Following these sightings, the Navy conducted dedicated line transect surveys, recording multiple additional sightings of harbor porpoise, and have revised local density estimates accordingly. The current density estimates are based upon a small sample size of transect surveys, and may be further revised as more information becomes available from ongoing Navy survey efforts.

Behavior and Ecology—Harbor porpoises are non-social animals usually seen in small groups of two to five animals. Little is known about their social behavior. Harbor porpoises can be opportunistic foragers but primarily consume schooling forage fish (Osmek *et al.,* 1996; Bowen and Siniff, 1999; Reeves *et al.,* 2002). Along the coast of Washington, harbor porpoises primarily feed on herring, market squid (*Loligo opalescens*) and eulachon (*Thaleichthys pacificus*) (Gearin *et al.,* 1994). Females reach sexual maturity at three to four years of age and may give birth every year for several years in a row. Calves are born in late spring (Read, 1990; Read and Hohn, 1995). Dall's and harbor porpoises appear to hybridize relatively frequently in the Puget Sound area (Willis *et al.,* 2004).

Acoustics—Harbor porpoise vocalizations include clicks and pulses (Ketten, 1998), as well as whistle-like signals (Verboom and Kastelein 1995). The dominant frequency range is 110–150 kHz, with source levels of 135–177 dB re 1 µPa-m (Ketten 1998). Echolocation signals include one or two low-frequency components in the 1.4–2.5 kHz range (Verboom and Kastelein 1995).

A behavioral audiogram of a harbor porpoise indicated the range of best sensitivity is 8–32 kHz at levels between 45–50 dB re 1 µPa-m (Andersen 1970); however, auditory-evoked potential studies showed a much higher frequency of approximately 125–130 kHz (Bibikov 1992). The auditory-evoked potential method suggests that the harbor porpoise actually has two frequency ranges of best sensitivity. More recent psycho-acoustic studies

found the range of best hearing to be 16–140 kHz, with a reduced sensitivity around 64 kHz (Kastelein *et al.,* 2002). Maximum sensitivity occurs between 100–140 kHz (Kastelein *et al.,* 2002).

Potential Effects of the Specified Activity on Marine Mammals

NMFS has determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of Steller sea lions, California sea lions, harbor seals, harbor porpoises, Dall's porpoises, and killer whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine Mammal Hearing

The primary effect on marine mammals anticipated from the specified activities would result from exposure of animals to underwater sound. Exposure to sound can affect marine mammal hearing. When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate functional hearing groups for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (thirteen species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and nineteen species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (six species of true porpoises, four species of river dolphins, two members of the genus *Kogia,* and four dolphin species of the genus *Cephalorhynchus*): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, three pinniped and three cetacean species are likely to occur in the proposed project area. Of the three cetacean species likely to occur in the project area, two are classified as high frequency cetaceans (Dall's and harbor porpoises) and one is classified as a mid-frequency cetacean (killer whales) (Southall *et al.,* 2007).

Underwater Sound Effects

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.,* 1973; O'Keefe and Young, 1984; DoN, 2001b).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction, either permanently or temporarily. However, this depends on both the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.,* 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for this project (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could

potentially occur. In those cases, the avoidance responses of the animals themselves would reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB re 1 μPa rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Levels greater than or equal to 190 dB re 1 μPa rms are expected to be restricted to radii no more than 5 m (16 ft) from the pile driving. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 μPa rms would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). To avoid the potential for injury, NMFS has determined that cetaceans should not be exposed to pulsed underwater sound at received levels exceeding 180 dB re 1 μPa rms. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa at 1 m (3.3 ft). Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds

that could cause TTS or the onset of PTS.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). Behavioral responses to sound are highly variable and context specific. For each potential behavioral change, the magnitude of the change ultimately determines the severity of the response. A number of factors may influence an animal's response to sound, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003/04). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003/04).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Caltrans, 2001, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003/04; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Caltrans 2001, 2006). Since pile driving would likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking. However, the sum of sound from the proposed activities is confined in an area of inland waters (Hood Canal) that is bounded by landmass; therefore, the

sound generated is not expected to contribute to increased ocean ambient sound.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of Steller sea lions, California sea lions, harbor seals, transient killer whales, harbor porpoises, and Dall's porpoises. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in a negligible impact from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Airborne Sound Effects

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for hauled-out pinnipeds in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Anticipated Effects on Habitat

The proposed activities at NBKB would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities would produce both pulsed (*i.e.,* impact pile driving) and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (Scholik and Yan, 2001, 2002; Govoni *et al.,* 2003; Hawkins, 2005; Hastings, 1990, 2007; Popper *et al.,* 2006; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality (Caltrans, 2001; Longmuir and Lively, 2001). The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the wharf construction project. However, adverse impacts may occur to a few species of rockfish (bocaccio [*Sebastes paucispinis*], yelloweye [*S. ruberrimus*] and canary [*S. pinniger*] rockfish) and salmon (chinook [*Oncorhynchus tshawytscha*] and summer run chum) which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae.

Pile Driving Effects on Potential Foraging Habitat

In addition, the area likely impacted by the wharf construction project is relatively small compared to the available habitat in the Hood Canal. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Hood Canal and nearby vicinity.

Given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile driving is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The modeling results for zones of influence (ZOIs; see ''Estimated Take by

Incidental Harassment'') were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals. While the ZOIs vary between the different diameter piles and types of installation methods, the Navy is proposing to establish mitigation zones for the maximum zone of influence for all pile driving conducted in support of the wharf construction project. In addition to the measures described later in this section, the Navy would employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Comply with applicable equipment sound standards of the U.S. Environmental Protection Agency and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment.

(c) For in-water heavy machinery work other than pile driving (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m (33 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); (3) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull); or (4) the placement of sound attenuation devices around the piles. For these activities, monitoring would take place from 15 minutes prior to initiation until the action is complete.

Shutdown and Buffer Zone

The following measures would apply to the Navy's mitigation through shutdown and buffer zones:

(a) The Navy would implement a minimum shutdown zone of 25 m (82 ft) radius for cetaceans and 10 m for pinnipeds around all pile driving activity. Shutdown zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180-dB isopleth for cetaceans; 190-dB isopleth for pinnipeds). In this case, pile driving sounds are expected to attenuate below 180 dB at distances of 22 m (72 ft) or less and below 190 dB at distances of 5 m (16 ft) or less, but the minimum shutdown zones are intended to further avoid the risk of direct interaction between marine mammals and the equipment.

(b) The calculated zone encompassing the full 120-dB buffer zone for vibratory pile driving (an effective area of 41.4 km^2 when attenuation due to landmasses is accounted for) is so large as to make monitoring impracticable. As described previously, the buffer zone corresponding to the 160-dB harassment criterion for impact pile driving would always be subsumed by the larger zone associated with concurrently operating vibratory pile drivers. In order to conduct monitoring additional to the monitoring conducted in support of the shutdown zones, the Navy would establish an observation position within the Waterfront Restricted Area, maximally distant from the pile driving operations. Any marine mammal observations would be relayed to the observers monitoring the shutdown zones and would be recorded as Level B takes. The additional position would be able to monitor an effective area of at least 500 m distance from the pile driving activity, and any sighted animals would be recorded as takes. However, with such a large action area, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound.

(c) The shutdown and buffer zones would be monitored throughout the time required to drive a pile. If a marine mammal is observed within the buffer zone, a take would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted.

(d) All buffer and shutdown zones would initially be based on the distances from the source that are predicted for each threshold level. However, in-situ acoustic monitoring would be utilized to determine the actual distances to these threshold zones, and the size of the shutdown and buffer zones would be adjusted accordingly based on received SPLs.

Visual Monitoring

Monitoring would be conducted for a minimum 10 m or 25 m shutdown zone (for pinnipeds and cetaceans, respectively) and an approximate 500 m (1,640 ft) buffer zone surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. The buffer zone was set at the largest area practicable for the Navy to maintain a monitoring presence over the duration of the activity. Sightings occurring outside this area (within the predicted 41.4 km^2 buffer zone predicted for the 120-dB isopleths) would still be recorded and noted as a take, but detailed observations outside this zone would not be possible, and it would be impossible for the Navy to account for all individuals occurring in such a zone with any degree of certainty. Monitoring would take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities.

The following additional measures would apply to visual monitoring:

(a) Monitoring would be conducted by qualified observers. A trained observer would be placed from the best vantage point(s) practicable (*e.g.,* from a small boat, the pile driving barge, on shore, or any other suitable location) to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.

(b) Prior to the start of pile driving activity, the shut-down zone would be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving would only commence once observers have declared the shut-down zone clear of marine mammals; animals would be allowed to remain in the buffer zone (*i.e.,* must leave of their own volition) and their behavior would be monitored and documented.

(c) If a marine mammal approaches or enters the shut-down zone during the course of pile driving operations, pile driving would be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shut-down zone or 15 minutes have passed without re-detection of the animal.

Sound Attenuation Devices

Sound attenuation devices would be utilized during all impact pile driving operations. Impact pile driving is only expected to be required to proof, or drive the last 10–15 ft (3–4.6 m) of select piles. Past experience has shown that proofing is rarely required at the project location. The Navy plans to use a bubble curtain as mitigation for in-water sound during construction activities. Bubble curtains absorb sound, attenuate pressure waves, exclude marine life from work areas, and control the

migration of debris, sediments and process fluids.

Acoustic Measurements

Acoustic measurements would be used to empirically verify the proposed shut-down and buffer zones. For further detail regarding the Navy's acoustic monitoring plan see ''Proposed Monitoring and Reporting''.

Timing Restrictions

The Navy has set timing restrictions for pile driving activities to avoid in-water work when ESA-listed fish populations are most likely to be present. The in-water work window for avoiding negative impacts to fish species is July 16–February 15. The initial months (July to September) of the timing window overlap with times when Steller sea lions are not expected to be present within the project area.

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning, or providing marine mammals a chance to leave the area prior to the hammer operating at full capacity. The wharf construction project would utilize soft-start techniques (ramp-up and dry fire) for impact and vibratory pile driving. The soft-start requires contractors to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period. This procedure would be repeated two additional times. For impact driving, contractors would be required to provide an initial set of three strikes from the impact hammer at forty percent energy, followed by a 30-second waiting period, then two subsequent three strike sets.

Daylight Construction

Impact pile driving during the first half of the in-water work window (July 16 to September 15) would only occur between 2 hours after sunrise and 2 hours before sunset to protect breeding marbled murrelets. Vibratory pile driving and other construction activities occurring in the water between July 16 and September 15 could occur during daylight hours (sunrise to sunset). Between September 16 and February 15, construction activities occurring in the water would occur during daylight hours (sunrise to sunset).

Mitigation Effectiveness

It should be recognized that although marine mammals would be protected from Level A harassment by the utilization of a bubble curtain and protected species observers (PSOs) monitoring the near-field injury zones, mitigation may not be 100 percent effective at all times in locating marine mammals in the buffer zone. The efficacy of visual detection depends on several factors including the observer's ability to detect the animal, the environmental conditions (visibility and sea state), and monitoring platforms.

All observers utilized for mitigation activities would be experienced biologists with training in marine mammal detection and behavior. Due to their specialized training the Navy expects that visual mitigation would be highly effective. Trained observers have specific knowledge of marine mammal physiology, behavior, and life history, which may improve their ability to detect individuals or help determine if observed animals are exhibiting behavioral reactions to construction activities.

The Puget Sound region, including the Hood Canal, only infrequently experiences winds with velocities in excess of 25 kn (Morris *et al.,* 2008). The typically light winds afforded by the surrounding highlands coupled with the fetch-limited environment of the Hood Canal result in relatively calm wind and sea conditions throughout most of the year. The wharf construction project site has a maximum fetch of 8.4 mi (13.5 km) to the north, and 4.2 mi (6.8 km) to the south, resulting in maximum wave heights of from 2.85–5.1 ft (0.9–1.6 m) (Beaufort Sea State (BSS) between two and four), even in extreme conditions (30 kt winds) (CERC, 1984). Visual detection conditions are considered optimal in BSS conditions of three or less, which align with the conditions that should be expected for the wharf construction project at NBKB.

Habitat Mitigation

In addition to mitigation measures developed specifically for marine mammals and described previously, the following compensatory mitigation measures would be implemented to restore marine fish habitats, and by extension to indirectly benefit marine mammals in the project area. These measures were not developed in consultation with NMFS, but are described here due to their potential benefit for marine mammals.

Compensatory Mitigation—Compensatory Mitigation is the term given to projects or plans undertaken to offset unavoidable adverse environmental impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. Compensatory Mitigation involves actions taken to offset unavoidable adverse impacts to wetlands, streams, and other aquatic resources. For impacts authorized under a Clean Water Act Section 404 permit, Compensatory Mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem pursuant to 40 CFR part 230 (*i.e.,* the Clean Water Act Section 404(b)(1) Guidelines). Compensatory Mitigation is required for permits authorized by the Clean Water Act Section 404 and other Department of the Army permits.

The Compensatory Mitigation Rule establishes a hierarchy for Compensatory Mitigation:

- Mitigation Banks
- In-Lieu Fee (ILF) Programs
- Permittee-Responsible Mitigation

A preference for mitigation banks is established at present. However, there are no established mitigation banks or ILF programs for Kitsap County or the Hood Canal. Therefore, the Navy's preference for providing mitigation and complying with the Compensatory Mitigation Rule is through the development of an ILF Program. The goal of the ILF Program is to ensure no net loss of nearshore aquatic resource functions by in-kind mitigation within Kitsap County and/or Hood Canal. The Navy would partner with a qualified ILF sponsor that would be responsible for preparing all documentation associated with establishment of the program, including a prospectus, a credit/debit calculation tool or instrument, mitigation plans, and other appropriate documents. The ILF sponsor would be responsible for performing all of the required functions of the program including fiscal management; agreement(s) with entities that will purchase and hold mitigation sites in conservation status in perpetuity; reporting; and contracting for the design, construction, and monitoring for specific mitigation projects.

The Navy anticipates that the Kitsap County Nearshore Habitat Assessment and Restoration Prioritization Framework could provide an assessment tool to identify and prioritize mitigation sites. As the ILF program is developed for Kitsap County and/or Hood Canal, a more detailed credit/debit calculation tool or instrument would be developed. This information would be developed and reviewed in conjunction with the development of the ILF program. Mitigation can include protection, restoration, enhancement, and/or creation. The mitigation strategy selected will be based on an assessment of type and degree of disturbance at the

landscape, drift cell, and nearshore assessment unit (NAU) scales.

Priority would be given to mitigation strategies that augment regional and local watershed plans and goals. Such strategies include, but are not limited to, protection and restoration of critical resource areas through acquisition or conservation easements, reconnecting pocket estuaries to tidal fluxes, shoreline rehabilitation, removal of fish migration barriers, stream restoration, and reforestation of watersheds and marine/freshwater riparian zones.

Alternative Mitigation Strategies—In the event that an ILF program is not established in Kitsap County in time for use as mitigation for the proposed action, other mitigation options will be considered. As an alternative to pursuing the development of an ILF program for Kitsap County/and or Hood Canal, the Navy is currently assessing nearshore permittee responsible mitigation opportunities within the Hood Canal and Puget Sound with state and local agencies and tribes. The Navy would identify appropriate in-kind mitigation sufficient in size to ensure no net loss of aquatic resource functions. Strategies to effect no net loss could include a combination of restoration, enhancement, creation, and preservation of nearshore habitats. Potential nearshore mitigation sites will take into consideration state and local watershed management plans, property ownership, tribal usual and accustomed areas, likelihood of success, ability to address multiple functions and services both among and within aquatic habitat types, and the ability to affect or improve regional aquatic resource conservation initiatives. As with the proposed development of an ILF program, these potential permittee-responsible mitigation projects would also be reviewed in accordance with the Compensatory Mitigation Rule and would be submitted for review and approval as part of the application process. In the event that the Navy selects a permittee-responsible mitigation as the Compensatory Mitigation strategy, a mitigation plan would be submitted to the U.S. Army Corps of Engineers.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Acoustic Measurements

Within the first 30 days of pile driving, the Navy would capture a representative acoustic sample of the major pile driving scenarios under the modeled conditions (impact hammer and vibratory driving, smaller [24-in to 36-in] and larger [48-in] piles, plumb and batter piles). All measurements would be made with the sound attenuation measures discussed previously in place. These acoustic measurements would determine the actual distances to the following isopleths: 190 dB re 1µPa rms, 180 dB re 1µPa rms, and 160 dB re 1µPa rms. The Navy would also conduct underwater acoustic monitoring for vibratory pile driving to determine the actual distance to the 120 dB re 1µPa rms isopleth for marine mammal behavioral harassment relative to background levels. Maximum sound pressure levels would also be documented. Airborne acoustic monitoring would be conducted during impact and vibratory pile driving to identify the actual distance to the 90 dB re 20µPa rms, and 100 dB re 20µPa rms airborne isopleths.

At a minimum, the methodology would include:

- For underwater recordings, a stationary hydrophone system with the ability to measure SPLs at mid-water depth and approximately 1 m from the bottom, (taking tidal changes into account) would be placed at a distance of 10 m from the source. The hydrophone would be deployed so as to maintain a constant distance of 10 m from the pile.
- For airborne recordings, reference recordings would be attempted at approximately 50 ft (15.2 m) from the source via a stationary hydrophone. However, other distances may be utilized to obtain better data if the pile driving signal cannot be isolated clearly due to other sound sources (*e.g.,* barges or generators).
- Each hydrophone (underwater) and microphone (airborne) would be calibrated prior to the start of the action and would be checked at the beginning of each day of monitoring activity. Other hydrophones and microphones would be placed at other distances and/or depths and moved as necessary to determine the distance to the thresholds for marine mammals (these include peak, rms, and SEL for underwater sound, and unweighted for airborne sound).
- Unweighted ambient conditions, both airborne and underwater, would be measured and recorded for 30 to 60 s each hour, every day for one week during the first 30 days of the construction period to determine background sound levels. These measurements are intended to capture ambient background sound during the timeframe of construction, but in the absence of pile driving sound. Ambient sound recordings would be edited for anomalous data to provide the best possible baseline condition for background sound. Recording would be made in the 10 Hz to 20 kHz range.
- Airborne levels would be recorded as an unweighted time series. The distance to marine mammal airborne sound disturbance thresholds would be determined.
- Sound levels associated with the soft-start techniques (on a representative subset of piles) would also be measured.
- Environmental data would be collected, such as wind speed and direction, wave height, precipitation, presence and location of other vessels, and types and locations of in-water construction activities, as well as other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats).

• The construction contractor would supply the Navy and other relevant monitoring personnel the substrate composition, hammer model and size, hammer energy settings and any changes to those settings during hammering of the piles being monitored, depth of the pile being driven, and blows per foot for the piles monitored.

• Post-analysis of underwater sound level signals would include the average rms value across all pile strikes per pile, the rise time, average duration of each pile strike, and number of strikes per pile, as well as a frequency spectrum with mitigation, between 10 and 20,000 Hz, for up to eight successive strikes with similar sound levels. Rms analyses would be completed for vibratory driving, including presentation of representative frequency spectra.

• Post–analysis of airborne sound would be presented in an unweighted format, and would include presentation of the average rms value across all pile strikes per pile, and the average rms value for vibratory driving. Frequency spectra would be provided from 10 to 20,000 Hz for up to eight successive strikes with similar sound levels, and would also be provided for representative vibratory driving.

Visual Marine Mammal Observations

The Navy would collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers would be trained in marine mammal identification and behaviors. NMFS requires that the observers have no other construction-related tasks while conducting monitoring.

Methods of Monitoring—The Navy would monitor the shutdown zone and buffer zone before, during, and after pile driving. There would, at all times, be at least one observer stationed at an appropriate vantage point to observe the shutdown zones associated with each operating hammer. There would also at all times be at least one vessel-based observer stationed within the WRA. In addition, at least one marine mammal observer would be stationed on a vessel conducting acoustic monitoring outside the WRA, for as long as such monitoring is conducted. The Navy estimates that representative acoustic sampling may occur in approximately 30 days. Based on NMFS requirements, the Marine Mammal Monitoring Plan would include the following procedures for pile driving:

(1) MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the buffer zone as possible. This may require the use of a small boat to monitor certain areas while also monitoring from one or more land based vantage points.

(2) During all observation periods, observers would use binoculars and the naked eye to search continuously for marine mammals.

(3) If the shut down or buffer zones are obscured by fog or poor lighting conditions, pile driving at that location would not be initiated until that zone is visible.

(4) The shut down and buffer zones around the pile would be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Pre-Activity Monitoring—The shutdown and buffer zones would be monitored for 15 minutes prior to initiating the soft start for pile driving. If marine mammal(s) are present within the shut down zone prior to pile driving, or during the soft start, the start of pile driving would be delayed until the animal(s) leave the shut down zone. Pile driving would resume only after the PSO has determined, through sighting or by waiting 15 minutes, that the animal(s) has moved outside the shutdown zone.

During Activity Monitoring—The shutdown and buffer zones would also be monitored throughout the time required to drive or remove a pile. If a marine mammal is observed entering the buffer zone, a take would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal enters or approaches the shut down zone, at which point all pile driving activities would be halted. Pile driving can only resume once the animal has left the shutdown zone of its own volition or has not been re-sighted for a period of 15 minutes.

Post-Activity Monitoring—Monitoring of the shutdown and buffer zones would continue for 30 minutes following the completion of pile driving.

Individuals implementing the monitoring protocol would assess its effectiveness using an adaptive approach. Monitoring biologists would use their best professional judgment throughout implementation and would seek improvements to these methods when deemed appropriate. Any modifications to protocol would be coordinated between the Navy and NMFS.

Data Collection

NMFS requires that the PSOs use NMFS-approved sighting forms. In addition to the following requirements, the Navy would note in their behavioral observations whether an animal remains in the project area following a Level B taking (which would not require cessation of activity). This information would ideally make it possible to determine whether individuals are taken (within the same day) by one or more types of pile driving (*i.e.,* impact and vibratory). NMFS requires that, at a minimum, the following information be collected on the sighting forms:

(1) Date and time that pile driving begins or ends;

(2) Construction activities occurring during each observation period;

(3) Weather parameters identified in the acoustic monitoring (*e.g.,* percent cover, visibility);

(4) Water conditions (*e.g.,* sea state, tide state);

(5) Species, numbers, and, if possible, sex and age class of marine mammals;

(6) Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to SPLs;

(7) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(8) Locations of all marine mammal observations; and

(9) Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 60 days of the completion of the first 30 days of acoustic measurements and marine mammal monitoring. The results would be summarized in graphical form and include summary statistics and time histories of impact sound values for each pile. The report would also provide descriptions of any problems encountered in deploying sound attenuating devices, any adverse responses to construction activities by marine mammals, and actions taken to solve these problems. A final report would be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS. Within 60 days of the end of the in-water work period, a draft comprehensive report on all marine mammal monitoring conducted under the proposed IHA would be submitted to NMFS. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days. A final report would be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS. At a minimum, the report would include:

(1) Date and time of activity;

(2) Water and weather conditions (*e.g.,* sea state, tide state, percent cover, visibility);

(3) Physical characteristics of the bottom substrate where piles are driven;

(4) Description of the pile driving activity (*e.g.,* size and type of piles);

(5) A detailed description of the sound attenuation device, including design specifications;

(6) The impact or vibratory hammer force used to drive or extract the piles;

(7) A description of the monitoring equipment;

(8) The distance between hydrophone(s) and pile;

(9) The depth of the hydrophone(s);

(10) The depth of water in which the pile was driven;

(11) The depth into the substrate that the pile was driven;

(12) The ranges and means for peak, rms, and SELs for each pile;

(13) The results of the acoustic measurements, including the frequency spectrum, peak and rms SPLs, and single-strike and cumulative SEL with and without the attenuation system;

(14) The results of the airborne sound measurements (unweighted levels);

(15) A description of any observable marine mammal behavior in the immediate area and, if possible, the correlation to underwater sound levels occurring at that time;

(16) Actions performed to minimize impacts to marine mammals;

(17) Times when pile driving is stopped due to presence of marine mammals within shut down zones and time when pile driving resumes;

(18) Results, including the detectability of marine mammals, species and numbers observed, sighting rates and distances, behavioral reactions within and outside of shut down zones; and

(19) A refined take estimate based on the number of marine mammals observed in the shut down and buffer zones.

Estimated Take by Incidental Harassment

With respect to the activities described here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to an underwater sound by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. For example, during the past ten years, killer whales have been observed within the project area twice. On the basis of that information, an estimated amount of potential takes for killer whales is presented here. However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they would not.

The proposed project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal and sea lions are known to haul-out on submarines and other man-made objects at the NBKB waterfront (although typically at a distance of a mile or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with the proposed activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy is requesting authorization for the potential taking of small numbers of Steller sea lions, California sea lions, harbor seals, transient killer whales, Dall's porpoises, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the wharf construction project described previously in this document. The takes requested are expected to have no more than a minor effect on individual animals and no effect at the population level for these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the sound.

Marine Mammal Densities

For all species, the best scientific information available was used to construct density estimates or estimate local abundance. Of available information deemed suitable for use, the data that produced the most conservative (*i.e.,* highest) density or abundance estimate for each species was used. For harbor seals, this involved published literature describing harbor seal research conducted in Washington and Oregon as well as more specific counts conducted in Hood Canal (Huber *et al.,* 2001; Jeffries *et al.,* 2003). Killer whales are known from two periods of occurrence (2003 and 2005) and are not known to preferentially use any specific portion of the Hood Canal. Therefore, density was calculated as the maximum number of individuals present at a given time during those occurrences (London, 2006), divided by the area of Hood Canal. The best information available for the remaining species in Hood Canal came from surveys conducted by the Navy at the NBKB waterfront or in the vicinity of the project area. These consist of three discrete sets of survey effort, and are described here in greater detail.

Beginning in April 2008, Navy personnel have recorded sightings of marine mammals occurring at known haul-outs along the NBKB waterfront, including docked submarines or other structures associated with NBKB docks and piers and the nearshore pontoons of the floating security fence. Sightings of marine mammals within the waters adjoining these locations were also recorded. Sightings were attempted whenever possible during a typical work week (*i.e.,* Monday through Friday), but inclement weather, holidays, or security constraints often precluded surveys. These sightings took place frequently (average fourteen per month) although without a formal survey protocol. During the surveys, staff visited each of the above-mentioned locations and recorded

observations of marine mammals. Surveys were conducted using binoculars and the naked eye from shoreline locations or the piers/wharves themselves. Because these surveys consist of opportunistic sighting data from shore-based observers, largely of hauled-out animals, there is no associated survey area appropriate for use in calculating a density from the abundance data. Thus, NMFS has not used these data to derive a density but rather has used the absolute abundance to estimate take. Data were compiled for the period from April 2008 through June 2010 for analysis in this proposed IHA, and these data provided the basis for take estimation for Steller and California sea lions. Other information, including sightings data from other Navy survey efforts at NBKB, is available for these two species, but these data provide the most conservative (*i.e.,* highest) local abundance estimates (and thus the highest estimates of potential take).

Vessel-based marine wildlife surveys were conducted according to established survey protocols during July through September 2008 and November through May 2009–10 (Tannenbaum *et al.,* 2009, 2011). Eighteen complete surveys of the nearshore area resulted in observations of four marine mammal species (harbor seal, California sea lion, harbor porpoise, and Dall's porpoise). These surveys operated along pre-determined transects parallel to the shoreline from the nearshore out to approximately 1,800 ft (549 m) from shoreline, at a spacing of 100 yd (91 m), and covered the entire NBKB waterfront (approximately 3.9 km^2 per survey) at a speed of 5 kn or less. Two observers recorded sightings of marine mammals both in the water and hauled out, including date, time, species, number of individuals, age (juvenile, adult), behavior (swimming, diving, hauled out, avoidance dive), and haul-out location. Positions of marine mammals were obtained by recording distance and bearing to the animal with a rangefinder and compass, noting the concurrent location of the boat with GPS, and, subsequently, analyzing these data to produce coordinates of the locations of all animals detected. These surveys produced the information used to estimate take for Dall's porpoise, as well as for harbor porpoise under previous Navy actions at NBKB.

Recently, as part of the Test Pile Program, marine mammal monitoring was conducted on construction days for mitigation purposes. During those efforts, the Navy observed that harbor porpoises were more common in deeper waters of Hood Canal than the previously described, nearshore vessel-based surveys indicated. For that reason, the Navy conducted vessel-based line transect surveys in Hood Canal on days where no pile driving activities occurred in order to collect additional density data for species present in Hood Canal. These surveys were primarily conducted in September and detected three marine mammal species (harbor seal, California sea lion, and harbor porpoise), and included surveys conducted in both the main body of Hood Canal, near the project area, and baseline surveys conducted for comparison in Dabob Bay, an area of Hood Canal that is not affected by sound from Navy actions at the NBKB waterfront (see Figures 2–1 and 4–1 in the Navy's application). The surveys operated along pre-determined transects that followed a double saw-tooth pattern to achieve uniform coverage of the entire NBKB waterfront. The vessel traveled at a speed of approximately 5 kn when transiting along the transect lines. Two observers recorded sightings of marine mammals both in the water and hauled out, including the date, time, species, number of individuals, and behavior (swimming, diving, etc.). Positions of marine mammals were obtained by recording the distance and bearing to the animal(s), noting the concurrent location of the boat with GPS, and subsequently analyzing these data to produce coordinates of the locations of all animals detected. Sighting information for harbor porpoises was corrected for detectability (g(0) = 0.54; Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001). Distance sampling methodologies were used to estimate densities of animals for the data. Due to the recent execution of these surveys, not all data have been processed. Due to the unexpected abundance of harbor porpoises encountered during the Test Pile Program, data for this species were processed first and are available for use in this proposed IHA. All other species data may be included in subsequent environmental compliance documents once all post-processing is complete, but preliminary analysis indicates that use of the previously described data would still provide the most conservative take estimates for the other species.

The cetaceans, as well as the harbor seal, appear to range throughout Hood Canal; therefore, the analysis in this proposed IHA assumes that harbor seal, transient killer whale, harbor porpoise, and Dall's porpoise are uniformly distributed in the project area. The remaining species that occur in the project area, Steller sea lion and California sea lion, do not appear to utilize most of Hood Canal. The sea lions appear to be attracted to the man-made haul-out opportunities along the NBKB waterfront while dispersing for foraging opportunities elsewhere in Hood Canal. California sea lions were not reported during aerial surveys of Hood Canal (Jeffries *et al.,* 2000), and Steller sea lions have only been documented at the NBKB waterfront.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal, as discussed in preceding sections. The formula was developed for calculating take due to pile driving activity and applied to each group-specific sound impact threshold. The formula is founded on the following assumptions:

(a) All pilings to be installed would have a sound disturbance distance equal to that of the piling that causes the greatest sound disturbance (*i.e.,* the piling furthest from shore);

(b) Mitigation measures (*e.g.,* sound attenuation system) would be utilized, as discussed previously;

(c) All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken; and,

(d) An individual can only be taken once during a 24-h period.

The calculation for marine mammal takes is estimated by:

Take estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold zone of influence (ZOI) impact area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is the estimated range of impact to the sound criteria. The distances (actual) specified in Table 5 were used to calculate ZOI around each pile. All impact pile driving take calculations were based on the estimated threshold ranges using a bubble curtain with 10 dB attenuation as a mitigation measure (see ''Underwater Sound from Piledriving''). The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close

proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

For sea lions, as described previously, the surveys offering the most conservative estimates of abundance do not have a defined survey area and so are not suitable for deriving a density construct. Instead, abundance is estimated on the basis of previously described opportunistic sighting information at the NBKB waterfront, and it is assumed that the total amount of animals known from NBKB haul-outs would be 'available' to be taken in a given pile driving day. Thus, for these two species, take is estimated by multiplying abundance by days of activity.

While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time is actually spent pile driving. On days when pile driving occurs, it could take place for thirty minutes, or up to several hours. For each pile installed, vibratory pile driving is expected to be no more than one hour. The impact driving portion of the project is anticipated to take approximately fifteen minutes per pile (for proofing). Based on the proposed action, the total pile driving time from vibratory pile driving during installation would be a maximum of 195 days (approximately the number of days available during the in-water work window, when considering contractor work schedule). During installation, there is the potential for the contractor to need to utilize an impact hammer to proof a select number of piles, although past repairs on the existing pier have never required the use of an impact pile driver.

The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding NMFS-established thresholds. Of note in these exposure estimates, mitigation methods other than the use of a sound attenuation device (*i.e.,* visual monitoring and the use of shutdown zones) were not quantified within the assessment and successful implementation of this mitigation is not reflected in exposure estimates. Results from acoustic impact exposure assessments should be regarded as conservative estimates.

California Sea Lion

California sea lions are present in Hood Canal during much of the year with the exception of mid-June through August. California sea lions occur regularly in the vicinity of the project site from September through mid-June, as determined by Navy waterfront surveys conducted from April 2008 through June 2010 (Navy 2010; Table 8). With regard to the range of this species in Hood Canal and the project area, it is assumed on the basis of waterfront observations (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011) that the opportunity to haul out on submarines docked at Delta Pier is a primary attractant for California sea lions in Hood Canal, as they have rarely been reported, either hauled out or swimming, elsewhere in Hood Canal (Jeffries 2007, personal communication). Abundance is calculated as the monthly average of the maximum number observed in a given month, as opposed to the overall average (Table 8). For example, in the month of May, the maximum number of animals observed on any one day was 25 in 2008, 33 in 2009, and 17 in 2010, providing a monthly average of the maximum daily number observed of 25. This provides a conservative overall daily abundance of 26.2 for the in-water work window, as compared with an actual per survey abundance of 11.4 during the same period.

In previous IHAs issued to the Navy for work at NBKB, NMFS has calculated a density for California sea lions on the basis of the maximum daily average number of animals for the period of activity and the total project area (defined as 41.4 km^2). This approach was determined to be the most appropriate method of deriving a local density for the species (see, *e.g.,* 76 FR 6406). The method produced a similar estimate of take as would be produced through the use of abundance information and days of activity, because the density was based on the same area as the larger ZOI associated with the 120-dB harassment zone (*i.e.,* 41.4 km^2), described previously, but also allowed for calculation of take estimate for different areas, as would be encompassed by the 160-dB underwater harassment zone associated with impact driving or harassment zones associated with airborne sound. However, because the vibratory and impact pile drivers would be operating simultaneously under the currently proposed action, the 160-dB harassment zone associated with the impact driver would be at all times subsumed by the 120-dB harassment zone associated with the vibratory driver. In addition, because California sea lions are known to haul-out only in the vicinity of Delta Pier, over one mile south of the project area, they would not be subject to airborne sound that would constitute harassment (*i.e.,* within approximately 350 m of an impact-driven pile). As such, NMFS has determined that it is appropriate to discard the previously used density construct in favor of simple abundance. This methodology conservatively uses the maximum abundance (rather than mean) and assumes that all individuals would be taken on any given day of activity. NMFS feels that this provides a conservative estimate of the number of individuals that may be incidentally taken by the Navy's proposed action while avoiding the need to construct a density estimate from survey data with no defined survey area. As described previously, sighting information from other Navy survey effort that is more appropriate for estimating density (*i.e.,* with defined survey area) would produce a less conservative (*i.e.,* lower) estimate of take.

TABLE 8—CALIFORNIA SEA LION SIGHTING INFORMATION FROM NBKB, APRIL 2008–JUNE 2010

Month	Number of surveys	Number of surveys with animals present	Frequency of presence [1]	Abundance [2]
January	25	15	0.60	24.0
February	28	24	0.86	31.0
March	28	26	0.93	38.5
April	38	27	0.71	36.3
May	44	34	0.77	25.0
June	44	7	0.16	5.3
July	31	0	0	0
August	29	1	0.03	0.5
September	26	9	0.35	22.0

TABLE 8—CALIFORNIA SEA LION SIGHTING INFORMATION FROM NBKB, APRIL 2008–JUNE 2010—Continued

Month	Number of surveys	Number of surveys with animals present	Frequency of presence [1]	Abundance [2]
October	26	22	0.85	45.5
November	22	22	1	54.0
December	24	14	0.58	32.5
Total or average (in-water work season only)	211	107	0.53	26.2

Totals (number of surveys) and averages (frequency and abundance) presented for in-water work season (July–February) only. Information from March–June presented for reference.
[1] Frequency is the number of surveys with California sea lions present/number of surveys conducted.
[2] Abundance is calculated as the monthly average of the maximum daily number observed in a given month.

The largest observed number of California sea lions hauled out along the NBKB waterfront was 58 in a November survey. During the in-water construction period (mid-July to mid-February) the largest daily attendance average for each month ranged from 24 individuals to 54 individuals. The likelihood of California sea lions being present at NBKB is greatest from October through May, when the frequency of attendance in surveys was at least 0.58. Attendance along the NBKB waterfront in November surveys (2008–09) was 100 percent. Additionally, five navigational buoys near the entrance to Hood Canal were documented as potential haul-outs, each capable of supporting three adult California sea lions (Jeffries *et al.,* 2000). Breeding rookeries are in California; therefore, pups are not expected to be present in Hood Canal (NMFS 2008b). Female California sea lions are rarely observed north of the California/Oregon border; therefore, only adult and sub-adult males are expected to be exposed to project impacts. Table 10 depicts the estimated number of behavioral harassments.

Steller Sea Lion

Steller sea lions were first documented at the NBKB waterfront in November 2008, while hauled out on submarines at Delta Pier (Bhuthimethee, 2008, pers. comm.; Navy, 2010) and have been periodically observed since that time. Based on waterfront observations, Steller sea lions appear to use available haul-outs (typically in the vicinity of Delta Pier, approximately one mile south of the project area) and habitat similarly to California sea lions, although in lesser numbers. On occasions when Steller sea lions are observed, they typically occur in mixed groups with California sea lions also present, allowing observers to confirm their identifications based on discrepancies in size and other physical characteristics.

Vessel-based survey effort in NBKB nearshore waters have not detected any Steller sea lions (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011). Opportunistic sightings data provided by Navy personnel since April 2008 have continued to document sightings of Steller sea lions at Delta Pier from November through April (Table 9). Steller sea lions have only been observed hauled out on submarines docked at Delta Pier. Delta Pier and other docks at NBKB are not accessible to pinnipeds due to the height above water, although the smaller California sea lions and harbor seals are able to haul out on pontoons that support the floating security barrier. One to two animals are typically seen hauled out with California sea lions; the maximum Steller sea lion group size seen at any given time was six individuals in November 2009.

TABLE 9—STELLER SEA LION SIGHTING INFORMATION FROM NBKB, APRIL 2008–JUNE 2010

Month	Number of surveys	Number of surveys with animals present	Frequency of presence [1]	Abundance [2]
January	25	4	0.16	1.0
February	28	1	0.04	0.5
March	28	4	0.14	1.0
April	38	5	0.13	1.3
May	44	0	0	0
June	44	0	0	0
July	31	0	0	0
August	29	0	0	0
September	26	0	0	0
October	26	0	0	[3] 1.3
November	22	3	0.14	5.0
December	24	5	0.21	1.5
Total or average (in-water work season only)	211	13	0.07	1.2

Totals (number of surveys) and averages (frequency and abundance) presented for in-water work season (July–February) only. Information from March–June presented for reference.
[1] Frequency is the number of surveys with Steller sea lions present/number of surveys conducted.
[2] Abundance is calculated as the monthly average of the maximum daily number observed in a given month.
[3] Abundance updated to include observations made in October 2011 during Navy's Test Pile Program. All other information reflects only data from April 2008–June 2010.

Their frequency of occurrence by month has not exceeded 0.21 (in December 2009), *i.e.,* they were present in only 21 percent of surveys that month. The time period from November through April coincides with the time when Steller sea lions are frequently observed in Puget Sound. Only adult and sub-adult males are likely to be present in the project area during this time; female Steller sea lions have not been observed in the project area. Since there are no known breeding rookeries in the vicinity of the project site, Steller sea lion pups are not expected to be present. By May, most Steller sea lions have left inland waters and returned to their rookeries to mate. Although sub-adult individuals (immature or pre-breeding animals) will occasionally remain in Puget Sound over the summer, observational data (Table 9) have indicated that Steller sea lions are present only from November through April and not during the summer months. However, recent observational data available from the Navy's Test Pile Program noted the presence of Steller sea lions at NBKB in October for the first time. Up to four individuals were sighted either hauled out at the submarines docked at Delta Pier or swimming in the waters just adjacent to those haul-outs.

Local abundance information, rather than density, was used in estimating take for Steller sea lions. Please see the discussion provided previously for California sea lions. Steller sea lions are known only from haul-outs over one mile from the project area, and would not be subject to harassment from airborne sound. Table 10 depicts the number of estimated behavioral harassments.

Harbor Seal

Harbor seals are the most abundant marine mammal in Hood Canal, where they can occur anywhere in Hood Canal waters year-round. The Navy detected harbor seals during marine mammal boat surveys of the waterfront area from July to September 2008 (Tannenbaum *et al.,* 2009) and November to May 2010 (Tannenbaum *et al.,* 2011), as described previously. Harbor seals were sighted during every survey and were found in all marine habitats including nearshore waters and deeper water, and hauled out on manmade objects such as piers and buoys. During most of the year, all age and sex classes (except newborn pups) could occur in the project area throughout the period of construction activity. Since there are no known pupping sites in the vicinity of the project area, harbor seal neonates are not expected to be present during pile driving. Otherwise, during most of the year, all age and sex classes could occur in the project area throughout the period of construction activity. Harbor seal numbers increase from January through April and then decrease from May through August as the harbor seals move to adjacent bays on the outer coast of Washington for the pupping season. From April through mid-July, female harbor seals haul out on the outer coast of Washington at pupping sites to give birth. The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths, with the closest haul-out area to the project area being 10 mi (16 km) southwest of NBKB at Dosewallips River mouth (London, 2006). Please see Figure 4–1 of the Navy's application for a map of haul-out locations in relation to the project area.

Jeffries *et al.* (2003) conducted aerial surveys of the harbor seal population in Hood Canal in 1999 for the Washington Department of Fish and Wildlife and reported 711 harbor seals hauled out. The authors adjusted this abundance with a correction factor of 1.53 to account for seals in the water, which were not counted, and estimated that there were 1,088 harbor seals in Hood Canal. The correction factor (1.53) was based on the proportion of time seals spend on land versus in the water over the course of a day, and was derived by dividing one by the percentage of time harbor seals spent on land. These data came from tags (VHF transmitters) applied to harbor seals at six areas (Grays Harbor, Tillamook Bay, Umpqua River, Gertrude Island, Protection/Smith Islands, and Boundary Bay, BC) within two different harbor seal stocks (the coastal stock and the inland waters of WA stock) over four survey years. The Hood Canal population is part of the inland waters stock, and while not specifically sampled, Jeffries *et al.* (2003) found the VHF data to be broadly applicable to the entire stock. The tagging research in 1991 and 1992 conducted by Huber *et al.* (2001) and Jeffries *et al.* (2003) used the same methods for the 1999 and 2000 survey years. These surveys indicated that approximately 35 percent of harbor seals are in the water versus hauled out on a daily basis (Huber *et al.,* 2001; Jeffries *et al.,* 2003). Exposures were calculated using a density derived from the number of harbor seals that are present in the water at any one time (35 percent of 1,088, or approximately 381 individuals), divided by the area of the Hood Canal (291 km^2 [112 mi^2]) and the formula presented previously.

NMFS recognizes that over the course of the day, while the proportion of animals in the water may not vary significantly, different individuals may enter and exit the water. However, fine-scale data on harbor seal movements within the project area on time durations of less than a day are not available. Previous monitoring experience from Navy actions conducted from July-October 2011 in the same project area has indicated that this density provides an appropriate estimate of potential exposures. Data from those monitoring efforts are currently in post-processing and are not available in report form at this time. However, the density of harbor seals calculated in this manner (1.3 animals/km^2) is corroborated by results of the Navy's vessel-based marine mammal surveys at NBKB in 2008 and 2009–10, in which an average of five individual harbor seals per survey was observed in the 3.9 km^2 survey area (density = 1.3 animals/km^2) (Tannenbaum *et al.,* 2009, 2011).

The Navy's waterfront surveys have found that it is extremely rare for harbor seals to haul out in the vicinity of the project area, although it has been known to occur. Therefore, in order to estimate potential incidental take of harbor seals by airborne sound, NMFS has considered that the entire in-water density, as described previously, could potentially be available to be taken by airborne sound. This calculation, using the density estimate as described above and the maximum area estimated to be ensonified to 90 dB by airborne sound (0.41 km^2), results in a prediction that 0.5 seals could be exposed per day. When rounded up to the nearest whole number, this gives the result that up to one seal could haul-out within the 90-dB in-air harassment zone per day of pile driving. NMFS feels that this is extremely unlikely, based on past observations of the frequency with which harbor seals haul-out on the floating security fence near the project area, but that this is nevertheless an appropriate precautionary approach. Table 10 depicts the number of estimated behavioral harassments.

Killer Whales

Transient killer whales are uncommon visitors to Hood Canal. Transients may be present in the Hood Canal anytime during the year and traverse as far as the project site. Resident killer whales have not been observed in Hood Canal, but transient pods (six to eleven individuals per event) were observed in Hood Canal for

lengthy periods of time (59–172 days) in 2003 (January–March) and 2005 (February–June), feeding on harbor seals (London 2006).

These whales used the entire expanse of Hood Canal for feeding. Subsequent aerial surveys suggest that there has not been a sharp decline in the local seal population from these sustained feeding events (London 2006). Based on this data, the density for transient killer whales in the Hood Canal for January to June is 0.038/km² (eleven individuals divided by the area of the Hood Canal [291 km²]). Because the timeframe of known transient killer whale occurrence in Hood Canal only partially overlaps the construction period (January to mid-February), the days of total activity (or days of potential exposure) portion of the formula presented previously is reduced to 45 for killer whales. Table 10 depicts the number of estimated behavioral harassments.

Dall's Porpoise

Dall's porpoises may be present in the Hood Canal year-round and could occur as far as the project site. Their use of inland Washington waters, however, is mostly limited to the Strait of Juan de Fuca. The Navy conducted vessel-based surveys of the waterfront area in 2008–10 (Tannenbaum *et al.,* 2009, 2011). During one of the surveys a Dall's porpoise was sighted in August in the deeper waters off Carlson Spit.

In the absence of an abundance estimate for the entire Hood Canal, a density was derived from the waterfront survey by the number of individuals seen divided by total number of kilometers of survey effort (18 surveys with approximately 3.9 km² [1.5 mi²] of effort each), assuming strip transect surveys. In absence of any other survey data for the Hood Canal, this density is assumed to be throughout the project area. Exposures were calculated using the formula presented previously. Table 10 depicts the number of estimated behavioral harassments.

Harbor Porpoise

Harbor porpoises may be present in the Hood Canal year-round; their presence had previously been considered rare. During waterfront surveys of NBKB nearshore waters from 2008–10 only one harbor porpoise had been seen in 18 surveys of 3.9 km² each. However, during monitoring of recent Navy actions at NBKB (test pile program and EHW–1 pile replacement) several sightings indicated that their presence may be more frequent in deeper waters of Hood Canal than had been believed on the basis of existing survey data and anecdotal evidence. Subsequently, the Navy conducted dedicated vessel-based line transect surveys on days when no pile driving occurred (due to security, weather, etc.), described previously in this document, with regular observations of harbor porpoise groups. Sightings in the deeper waters of Hood Canal ranged up to 11 individuals, with an average of approximately six animals sighted per survey day (Navy, in prep.).

Sightings of harbor porpoises during these surveys were used to generate a density for Hood Canal. Based on guidance from other line transect surveys conducted for harbor porpoises using similar monitoring parameters (*e.g.,* boat speed, number of observers) (Barlow, 1988; Calambokidis *et al.,* 1993; Caretta *et al.,* 2001), the Navy determined the effective strip width for the surveys to be one kilometer, or a perpendicular distance of 500 m from the transect to the left or right of the vessel. The effective strip width was set at the distance at which the detection probability for harbor porpoises was equivalent to one, which assumes that all individuals on a transect are detected. Only sightings occurring within the effective strip width were used in the density calculation. By multiplying the trackline length of the surveys by the effective strip width, the total area surveyed during the surveys was 259.01 km². Thirty-five individual harbor porpoises were sighted within this area, resulting in a density of 0.135 animals per km². To account for availability bias, or the animals which are unavailable to be detected because they are submerged, the Navy utilized a g(0) value of 0.54, derived from other similar line transect surveys (Barlow, 1988; Calambokidis *et al.,* 1993; Carretta *et al.,* 2001). This resulted in a density of 0.250 harbor porpoises per km². For comparison, 274.27 km² of trackline survey effort in nearby Dabob Bay produced a corrected density estimate of 0.203 harbor porpoises per km². Exposures were calculated using the formula described previously. Table 10 depicts the number of estimated behavioral harassments.

Potential takes could occur if individuals of these species move through the area on foraging trips when pile driving is occurring. Individuals that are taken could exhibit behavioral changes such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals may move away from the sound source and be temporarily displaced from the areas of pile driving. Potential takes by disturbance would likely have a negligible short-term effect on individuals and not result in population-level impacts.

TABLE 10—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density/Abundance	Underwater		Airborne	Total proposed authorized takes
		Impact injury threshold [1]	Vibratory disturbance threshold (120 dB)	Impact disturbance threshold [3]	
California sea lion [2]	[4] 26.2	0	5,070	0	5,070
Steller sea lion	[4] 1.2	0	195	0	195
Harbor seal	1.31	0	10,530	195	10,725
Killer whale	0.038	0	90	N/A	90
Dall's porpoise	0.014	0	195	N/A	195
Harbor porpoise	0.250	0	1,950	N/A	1,950
Total		0	18,330	195	18,225

[1] Acoustic injury threshold for impact pile driving is 190 dB for pinnipeds and 180 dB for cetaceans.

[2] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

[3] Acoustic disturbance threshold is 100 dB for sea lions and 90 dB for harbor seals. NMFS does not believe that sea lions would be available for airborne acoustic harassment because they are known to haul-out only at locations well outside the zone in which airborne acoustic harassment could occur.

[4] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month. Abundance numbers are rounded to the nearest whole number for take estimation.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the proposed activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne or underwater sounds generated from pile driving. No mortality, serious injury, or Level A harassment is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals and Level B harassment would be reduced to the level of least practicable adverse impact. Specifically, vibratory hammers, which do not have significant potential to cause injury to marine mammals due to the relatively low source levels (less than 190 dB), would be the primary method of installation. Also, no impact pile driving would occur without the use of a sound attenuation system (*e.g.,* bubble curtain), and pile driving would either not start or be halted if marine mammals approach the shut-down zone (described previously in this document). The pile driving activities analyzed here are similar to other nearby construction activities within the Hood Canal, including two recent projects conducted by the Navy at the same location (test pile project and EHW–1 pile replacement project) as well as work conducted in 2005 for the Hood Canal Bridge (SR–104) by the Washington Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals.

The proposed numbers of authorized take for Steller and California sea lions and for Dall's porpoises would be considered small relative to the relevant stocks or populations (each less than two percent) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. The proposed numbers of authorized take for harbor seals, transient killer whales, and harbor porpoises are somewhat higher relative to the total stocks. However, these numbers represent the instances of take, not the number of individuals taken. That is, it is likely that a relatively small subset of Hood Canal harbor seals, which is itself a small subset of the regional stock, would be harassed by project activities. While the available information and formula estimate that as many as 10,725 exposures of harbor seals to stimuli constituting Level B harassment could occur, that number represents some portion of the approximately 1,088 harbor seals resident in Hood Canal (approximately seven percent of the regional stock) that could potentially be exposed to sound produced by pile driving activities on multiple days during the project. No rookeries are present in the project area, there are no haul-outs other than those provided opportunistically by man-made objects, and the project area is not known to provide foraging habitat of any special importance. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for Hood Canal harbor seals, and thus would not result in any adverse impact to the stock as a whole. Similarly, for killer whales, the estimated number of takes represents a single group of eleven whales that could potentially be exposed to sound on multiple days, if present. In fact, if a group of transient killer whales was present in the Hood Canal during the project (which is in itself unlikely, as such groups have appeared only twice since 2003), such a group would be able to simply leave the project area and forage elsewhere in Hood Canal or Puget Sound if the acoustic behavioral harassment caused by the project disturbed the group to a sufficient degree. However, it is difficult to quantify such a group's willingness to remain in the presence of behavioral harassment or, alternatively, to depart the project area. As such, NMFS proposes to authorize the take presented in Table 10, which represents the take of a single pod (approximately 11) that might be taken repeatedly over multiple days if they stayed in the area. The possible repeated exposure of a small group of individuals to levels associated with Level B harassment in this area is expected to have a negligible impact on the stock.

For harbor porpoises, the situation relative to the regional stock (where estimated take is approximately eighteen percent) is less clear as little is known about their use of Hood Canal. Sightings information from opportunistic waterfront surveys as well as designed surveys of nearshore waters had previously indicated that harbor porpoises rarely occurred in NBKB waters. In addition, although no systematic survey work for harbor porpoises has occurred in Hood Canal, anecdotal evidence and expert opinion received through personal communication had confirmed that harbor porpoises were expected to occur infrequently and in low numbers in the project area. Recent Navy surveys, described previously in this document, have indicated that harbor porpoises are present in greater numbers than had been believed. It is unclear from the limited information available what relationship this occurrence, recorded only during September–October, 2011, may hold to the regional stock or whether similar usage of Hood Canal may be expected to recur throughout the project timeframe. Nevertheless, the estimated take of harbor porpoises is likely an overestimate (as it is based on information that may not hold true throughout the project timeframe) and should be considered to present a negligible impact on the stock. Harbor porpoise sightings to date have occurred only at significant distance from the project area (both inside and outside of the predicted 120–dB zone).

NMFS has preliminarily determined that the impact of the previously described wharf construction project may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No mortality or injuries are anticipated as a result of the specified activity, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. For pinnipeds, the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site means that potential takes by disturbance would

have an insignificant short-term effect on individuals and would not result in population-level impacts. Similarly, for cetacean species the absence of any known regular occurrence adjacent to the project site means that potential takes by disturbance would have an insignificant short-term effect on individuals and would not result in population-level impacts. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

For reasons stated previously in this document, the negligible impact determination is also supported by the likelihood that, given sufficient ''notice'' through mitigation measures including soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious, and the likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal, enabling the implementation of shut-downs to avoid injury, serious injury, or mortality. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and would be avoided through the incorporation of the proposed mitigation measures.

While the number of marine mammals potentially incidentally harassed would depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small relative to regional stock or population number, and has been mitigated to the lowest level practicable through incorporation of the proposed mitigation and monitoring measures mentioned previously in this document. This activity is expected to result in a negligible impact on the affected species or stocks. The Eastern DPS of the Steller sea lion is listed as threatened under the ESA; no other species for which take authorization is requested are either ESA-listed or considered depleted under the MMPA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the proposed wharf construction project would result in the incidental take of small numbers of marine mammal, by Level B harassment only, and that the total taking from the activity would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

No tribal subsistence hunts are held in the vicinity of the project area; thus, temporary behavioral impacts to individual animals would not affect any subsistence activity. Further, no population or stock level impacts to marine mammals are anticipated or authorized. As a result, no impacts to the availability of the species or stock to the Pacific Northwest treaty tribes are expected as a result of the proposed activities. Therefore, no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

There is one ESA-listed marine mammal species with known occurrence in the project area: The Eastern DPS of the Steller sea lion, listed as threatened. Because of the potential presence of Steller sea lions, the Navy engaged in a formal consultation with the NMFS Northwest Regional Office under Section 7 of the ESA. The Biological Opinion associated with that consultation concluded that the proposed action is not likely to jeopardize the continued existence of the Steller sea lion. The Steller sea lion does not have critical habitat in the action area.

National Environmental Policy Act (NEPA)

The Navy has prepared a preliminary final EIS. NMFS, which is a cooperating agency in the preparation of that document, will review it and the public comments received and subsequently either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. The Navy EIS is available for public review at *www.nbkeis.com.*

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to the Navy's wharf construction project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 14, 2011.

James H. Lecky

Director, Office of Protected Resources, National Marine Fisheries Service.

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Part VI

Bureau of Consumer Financial Protection

12 CFR Part 1002
Equal Credit Opportunity (Regulation B); Interim Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

[Docket No. CFPB–2011–0019]

RIN 3170–AA06

Equal Credit Opportunity (Regulation B)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Board of Governors of the Federal Reserve System's (Board's) rulemaking authority for the Equal Credit Opportunity Act (ECOA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation B (Equal Credit Opportunity). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation B, previously published by the Board.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0019* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Bill Matchneer or Paul Mondor, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.,* makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. Historically, ECOA has been implemented in Regulation B of the Board of Governors of the Federal Reserve System (Board), 12 CFR part 202. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended a number of consumer financial protection laws, including ECOA. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for ECOA to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.[2] *See* sections 1061 and 1085 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and ECOA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation B (Equal Credit Opportunity), 12 CFR Part 1002, implementing ECOA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act).

[1] Public Law 111–203,124 Stat. 1376 (2010).

[2] Dodd-Frank section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the Board's Regulation B as the Bureau's new Regulation B, 12 CFR Part 1002, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, the Bureau is preserving the numbering systems of the Board's Regulation B, other than the new part number. While this interim final rule generally incorporates the Board's existing regulatory text, appendices (including model forms and clauses), and supplements, as amended,[3] the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulation B to implement certain other changes to ECOA made by the Dodd-Frank Act, such as the addition of small business loan data collection and changes to consumers' right to a copy of an appraisal, as well as possibly increasing the duration of Regulation B's record-keeping requirement in light of the expansion of the statute of limitations under the Dodd-Frank Act from two to five years.

B. Specific Changes

The Bureau has made certain nomenclature and other non-substantive changes consistently throughout Regulation B. References to the Board and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references and addresses for filing applications and notices. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to ECOA, as amended by the Dodd-Frank Act. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. In addition, certain changes have been made to the text of the Board's Regulation B to conform to current codification standards of the Code of Federal Regulations. For example, footnotes have been eliminated and their substance moved to the body of the regulation as appropriate. Finally, § 1002.16(b)(2), as adopted by this

[3] *See* 76 FR 41590 (July 15, 2011).

interim final rule, reflects the five-year statute of limitations for civil actions under ECOA or Regulation B, as increased from the previous two years by the Dodd-Frank Act.

The Board's Appendix A has been revised in this interim final rule to update the Federal agencies that should be listed by particular categories of creditors in adverse action notices pursuant to § 1002.9(b)(1). Thus, the list has been revised to reflect the elimination of the Office of Thrift Supervision and the grant of enforcement authority under ECOA to the Bureau for depository institutions and credit unions with total assets of more than $10 billion and their affiliates.[4]

With regard to nonbank creditors (other than affiliates of large depository institutions and credit unions), the interim final rule has left the language of Appendix A to the Board's Regulation B, 12 CFR Part 202, unchanged for the time being. The Dodd-Frank Act assigned the Bureau enforcement authority with respect to such nonbank entities generally and created an Office of Fair Lending and Equal Opportunity within the Bureau to focus on fair, equitable, and nondiscriminatory access to credit.[5] The interim rule's Appendix A has been adjusted to focus on the Federal agencies that should be identified in adverse action notices pursuant to § 1002.9(b)(1). As revised, Appendix A is therefore not intended to describe the allocation of enforcement authority for ECOA and Regulation B following Dodd-Frank, but rather to specify efficient points of contact. The Bureau expects that agencies that receive ECOA complaints or inquiries will share that information with other agencies as appropriate. The Bureau intends to work closely with other relevant Federal agencies regarding the optimal intake and routing of fair lending complaints and inquiries for nonbank entities. Thus, the Bureau has delayed making additional updates to Appendix A pending this interagency coordination.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under ECOA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies. The term ''consumer financial protection functions'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [6] The ECOA is a Federal consumer financial law.[7] Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act, the authority of the Board to issue regulations pursuant to ECOA transferred to the Bureau.[8]

The ECOA, as amended, authorizes the Bureau to issue regulations to carry out the provisions of ECOA.[9] These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purpose of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA.[10] In its existing regulation, the Board used this ECOA authority to establish extensive rules concerning the taking and evaluation of credit applications, procedures and notices for credit denials and other adverse action, and the treatment of persons other than the applicant on credit documents.[11]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA) [12] generally requires public notice and an opportunity to comment before promulgation of regulations.[13] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[14] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of ECOA authority from the Board to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the Board's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, replacing appropriate nomenclature to reflect the transfer of authority to the Bureau, updating the statute of limitations for civil actions to conform with the amendments of ECOA, and changing the addresses of the Federal agencies identified in adverse action notices. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the Board's regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with ECOA and its implementing regulations and will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30

[4] *See* Public Law 111–203, section 1025.

[5] The FTC retains the ECOA enforcement authority that it possessed prior to the Dodd-Frank Act. *See* 15 U.S.C. 1691c(c); Public Law 111–203, section 1061(b)(5)(C)(i).

[6] Public Law 111–203, section 1061(a)(1). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted ''all powers and duties'' vested in each of the Federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[7] Public Law 111–203, section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); *id.* Section 1002(12) (defining ''enumerated consumer laws'' to include ECOA).

[8] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

[9] *Id.* Section 1085; 15 U.S.C. 1691b.

[10] *Id.*

[11] *See* the Board's Regulation B, 12 CFR part 202.

[12] 5 U.S.C. 551 *et seq.*

[13] 5 U.S.C. 553(b), (c).

[14] 5 U.S.C. 553(b)(3)(A), (B).

days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[15]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule. To the extent that one-time modifications to forms are required, the Bureau has provided an ample implementation period to allow appropriate advance notice and facilitate compliance without suspending the benefits of the interim final rule during the intervening period.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[16] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulation B to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with ECOA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. Although the interim final rule will require the modification of forms to reflect the transfer of authority to the Bureau, as discussed below, the interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

As a general matter, this interim final rule does not impose additional reporting, disclosure or other requirements beyond those previously in existence. As discussed above in part II of this **SUPPLEMENTARY INFORMATION**, consistent with the existing regulation, the Bureau's § 1002.9(b)(1) requires creditors to provide a statement of an applicant's rights under ECOA when adverse action is taken, and this statement must include the name and address of the appropriate Federal agency or agencies identified in Appendix A. The Bureau's new Appendix A adds the Bureau and makes other changes to reflect the elimination of the Office of Thrift Supervision, consistent with the transfer of authority under the Dodd-Frank Act. To afford creditors sufficient time to modify their existing forms, section 1002.9(b)(1) provides creditors the option of including the Federal agency as identified in the Board's existing Appendix A until January 1, 2013.

Thus, by January 1, 2013, certain categories of creditors will need to make one-time revisions to their adverse action forms. The Bureau estimates that these changes will take four hours per form, per creditor; the precise number of form changes varies with the type of affected creditor. The Bureau thus estimates that these changes will impose a total cost of roughly $148,000 spread across approximately 1,000 creditors. These costs may be overstated to the extent that multiple creditors use the same software vendors, who are able to spread any costs over all of their affected clients. These estimates may also be overstated because the Bureau is giving affected creditors one year to effect the changes, thus allowing affected creditors to include the changes in routine, scheduled systems updates during the next year. These one-time changes to the affected disclosures ultimately will provide ongoing benefits to consumers by providing them with accurate information on appropriate agencies to contact with complaints or inquiries regarding potential ECOA violations.

Although not required by the interim final rule, affected creditors may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation B. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible, and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other systems updates at the creditor's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulation B, as well as regulations implementing thirteen other existing consumer financial laws,[17] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[18] The Bureau also has

[15] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[16] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[17] The fourteen laws implemented by this and its companion rulemakings are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[18] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample

consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[19] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[20] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[21]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[22] and the panel requirement applies only when a rulemaking requires an IRFA.[23] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation B. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no new, substantive obligations on covered entities and will require only minor, one-time adjustments to certain model forms, as discussed in part III above. Moreover, as noted, the per-creditor cost estimate discussed above may be overstated to the extent that multiple creditors use the same software vendors, who are able to spread costs over all of their affected clients. Small entities, in particular, are especially likely to rely on outside vendors for disclosure compliance systems and therefore may have even less burden in complying with the one-time changes required by this interim final rule.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0013.

List of Subjects in 12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds Part 1002 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Sec.

1002.1 Authority, scope and purpose.
1002.2 Definitions.
1002.3 Limited exceptions for certain classes of transactions.
1002.4 General rules.
1002.5 Rules concerning requests for information.
1002.6 Rules concerning evaluation of applications.
1002.7 Rules concerning extensions of credit.
1002.8 Special purpose credit programs.
1002.9 Notifications.
1002.10 Furnishing of credit information.
1002.11 Relation to state law.
1002.12 Record retention.
1002.13 Information for monitoring purposes.
1002.14 Rules on providing appraisal reports.
1002.15 Incentives for self-testing and self-correction.
1002.16 Enforcement, penalties and liabilities.
Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices
Appendix B to Part 1002—Model Application Forms
Appendix C to Part 1002—Sample Notification Forms
Appendix D to Part 1002—Issuance of Official Interpretations
Supplement I to Part 1002—Official Interpretations

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

§ 1002.1 Authority, scope and purpose.

(a) *Authority and scope.* This part, known as Regulation B, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in § 1002.2(l), other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0013.

(b) *Purpose.* The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records

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of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[19] 5 U.S.C. 601 *et seq.*

[20] 5 U.S.C. 603, 604.

[21] 5 U.S.C. 609.

[22] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[23] 5 U.S.C. 609(b).

of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 1002.2 Definitions.

For the purposes of this part, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant;

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 1002.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§ 1002.3(a)–(d).

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems.* (1) *A credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system,* the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop

such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term ''unmarried'' includes persons who are single, divorced, or widowed.

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness,* in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1002.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit.* (1) *Definition.* Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this part do not apply to public utilities credit:

(i) Section 1002.5(d)(1) concerning information about marital status; and

(ii) Section 1002.12(b) relating to record retention.

(b) *Securities credit.* (1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this part do not apply to securities credit:

(i) Section 1002.5(b) concerning information about the sex of an applicant;

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

(iii) Section 1002.5(d)(1) concerning information about marital status;

(iv) Section 1002.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 1002.7(c) relating to action concerning open-end accounts, to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 1002.7(d) relating to the signature of a spouse or other person;

(vii) Section 1002.10 relating to furnishing of credit information; and

(viii) Section 1002.12(b) relating to record retention.

(c) *Incidental credit.* (1) *Definition.* Incidental credit refers to extensions of consumer credit other than the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 1026.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this part do not apply to incidental credit:

(i) Section 1002.5(b) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

(iii) Section 1002.5(d)(1) concerning information about marital status;

(iv) Section 1002.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(v) Section 1002.7(d) relating to the signature of a spouse or other person;

(vi) Section 1002.9 relating to notifications;

(vii) Section 1002.10 relating to furnishing of credit information; and

(viii) Section 1002.12(b) relating to record retention.

(d) *Government credit.* (1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for § 1002.4(a), the general rule against discrimination on a prohibited basis, the requirements of this part do not apply to government credit.

§ 1002.4 General rules.

(a) *Discrimination.* A creditor shall not discriminate against an applicant on

a prohibited basis regarding any aspect of a credit transaction.

(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 1002.13(a).

(d) *Form of disclosures.* (1) *General rule.* A creditor that provides in writing any disclosures or information required by this part must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 1002.5 and 1002.13, in a form the applicant may retain.

(2) *Disclosures in electronic form.* The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§ 1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2)(i) accompany an application accessed by the applicant in electronic form, these disclosures may be provided to the applicant in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

(e) *Foreign-language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

§ 1002.5 Rules concerning requests for information.

(a) *General rules.* (1) *Requests for information.* Except as provided in paragraphs (b) through (d) of this section, a creditor may request any information in connection with a credit transaction. This paragraph does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

(2) *Required collection of information.* Notwithstanding paragraphs (b) through (d) of this section, a creditor shall request information for monitoring purposes as required by § 1002.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this part, or other Federal or state statutes or regulations.

(3) *Special-purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in §§ 1002.8(b), (c), and (d).

(b) *Limitation on information about race, color, religion, national origin, or sex.* A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(1) *Self-test.* A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of conducting a self-test that meets the requirements of § 1002.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2) *Sex.* An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(c) *Information about a spouse or former spouse.* (1) *General rule.* Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

(d) *Other limitations on information requests.* (1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(e) *Permanent residency and immigration status.* A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

§ 1002.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not make assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this part.

§ 1002.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts.* (1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person.* (1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being

relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 1002.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this part permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections.* (1) *General applicability.* All the provisions of this part apply to each of the special purpose credit programs described in paragraph (a) of this section except as modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this part.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose credit program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose credit program if the signature is required by Federal or state law.

§ 1002.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons.* (1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

(i) With regard to a business that had gross revenues of $1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

(b) *Form of ECOA notice and statement of specific reasons.* (1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in Appendix A of this part]. Until January 1, 2013, a creditor may comply with this paragraph (b)(1) and paragraph (a)(2) of this section by including in the notice the name and address as specified by the appropriate agency in Appendix A to 12 CFR Part 202, as in effect on October 1, 2011.

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications.* (1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 1002.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 1002.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this part alters, affects, or preempts only those state laws that are inconsistent with the Act and this part and then only

to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the Act and this part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this part;

(iv) Prohibits asking about or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 1002.8.

(2) A creditor, state, or other interested party may request that the Bureau determine whether a state law is inconsistent with the requirements of the Act and this part.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any Federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or Federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions.* (1) *Applications.* A state may apply to the Bureau for an exemption from the requirements of the Act and this part for any class of credit transactions within the state. The Bureau will grant such an exemption if the Bureau determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to those of the Act and this part or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 of the Act or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part.

§ 1002.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this part for use in evaluating applications, without violating the Act or this part, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this part or other Federal or state statutes or regulations.

(b) *Preservation of records.* (1) *Applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(2) *Existing accounts.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(3) *Other applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 1002.16 of this part. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in § 1002.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

(7) *Prescreened solicitations.* For 25 months after the date on which an offer

of credit is made to potential customers (12 months for business credit, except as provided in paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

§ 1002.13 Information for monitoring purposes.

(a) *Information to be requested.* (1) A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(i) Ethnicity, using the categories Hispanic or Latino, and not Hispanic or Latino; and race, using the categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White;

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

(b) *Obtaining information.* Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

§ 1002.14 Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of an appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 1002.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 1002.9 of this part or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

§ 1002.15 Incentives for self-testing and self-correction.

(a) *General rules.* (1) *Voluntary self-testing and correction.* The report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined.* (1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this part; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action.* (1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than

not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d) *Scope of privilege.* (1) *General rule.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 1002.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 1002.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this part has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

§ 1002.16 Enforcement, penalties and liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, National Credit Union Administration, Surface Transportation Board, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, Secretary of Transportation, and Bureau of Consumer Financial Protection.

(2) Except to the extent that administrative enforcement is specifically assigned to some government agency other than the Bureau, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission is authorized to enforce the requirements imposed under the Act and this part.

(b) *Penalties and liabilities.* (1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this part also constitute violations of other Federal laws. Liability for punitive damages can apply only to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f) of the Act, a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within five years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within five years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this part, it may refer the matter to the Attorney General of the United States. If the Bureau, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this part, the agency shall refer the matter to the Attorney General. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this part, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, a consumer compliance examination, or some other basis) that a violation of the Act or this part has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall:

(i) Notify the Secretary of Housing and Urban Development; and

(ii) Inform the applicant that the Secretary of Housing and Urban Development has been notified and that remedies may be available under the Fair Housing Act.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 1002.6(b)(6), 1002.9, 1002.10, 1002.12 or 1002.13 is not a violation if it results from an

inadvertent error. On discovering an error under §§ 1002.9 and 1002.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the ethnicity, race, and sex of the applicant in a dwelling-related transaction not covered by § 1002.13, the creditor may retain information and act on the application without violating the regulation.

Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to § 1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates:* Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC 20006. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

2. To the extent not included in item 1 above:

a. *National banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:* Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–9050

b. *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:* Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

c. *Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:* FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Protection (OCP), Division of Consumer Compliance and Outreach (DCCO), 1775 Duke Street, Alexandria, VA 22314.

3. *Air carriers:* Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

4. *Creditors Subject to Surface Transportation Board:* Office of Proceedings, Surface Transportation Board, Department of Transportation, 1925 K Street NW., Washington, DC 20423.

5. *Creditors Subject to Packers and Stockyards Act:* Nearest Packers and Stockyards Administration area supervisor.

6. *Small Business Investment Companies:* Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.

7. *Brokers and Dealers:* Securities and Exchange Commission, Washington, DC 20549.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations:* Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

9. *Retailers, Finance Companies, and All Other Creditors Not Listed Above:* FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B to Part 1002—Model Application Forms

1. This Appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions which contains a model disclosure for use in complying with § 1002.13 for certain dwelling-related loans. All forms contained in this Appendix are models; their use by creditors is optional.

2. The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 1002.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

3. If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (b), (c) and (d) of § 1002.5 of this part.

BILLING CODE 4810–AM–P

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

We intend to apply for joint credit. _____ (Applicant) _____ (Co-Applicant)

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

If you intend to apply for joint credit, please initial here. _____ (Applicant) _____ (Co-Applicant)

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower," as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ❑ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ❑ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: ❑ VA ❑ FHA ❑ Conventional ❑ USDA/Rural Housing Service ❑ Other (explain): | Agency Case Number | Lender Case Number

Amount $ | Interest Rate % | No. of Months | **Amortization Type:** ❑ Fixed Rate ❑ GPM ❑ Other (explain): ❑ ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP) | No. of Units

Legal Description of Subject Property (attach description if necessary) | Year Built

Purpose of Loan ❑ Purchase ❑ Construction ❑ Other (explain): ❑ Refinance ❑ Construction-Permanent

Property will be: ❑ Primary Residence ❑ Secondary Residence ❑ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ❑ made ❑ to be made
	$	$		Cost: $

Title will be held in what Name(s) | Manner in which Title will be held | Estate will be held in: ❑ Fee Simple ❑ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

III. BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable)	Co-Borrower's Name (include Jr. or Sr. if applicable)
Social Security Number | Home Phone (incl. area code) | DOB (MM/DD/YYYY) | Yrs. School	Social Security Number | Home Phone (incl. area code) | DOB (MM/DD/YYYY) | Yrs. School
❑ Married ❑ Separated ❑ Unmarried (include single, divorced, widowed) | Dependents (not listed by Co-Borrower) no. ages	❑ Married ❑ Separated ❑ Unmarried (include single, divorced, widowed) | Dependents (not listed by Borrower) no. ages
Present Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.	Present Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.
Mailing Address, if different from Present Address	Mailing Address, if different from Present Address
If residing at present address for less than two years, complete the following:	
Former Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.	Former Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.

IV. EMPLOYMENT INFORMATION

Borrower	Co-Borrower
Name & Address of Employer ❑ Self Employed | Yrs. on this job | Yrs. employed in this line of work/profession	Name & Address of Employer ❑ Self Employed | Yrs. on this job | Yrs. employed in this line of work/profession
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)
If employed in current position for less than two years or if currently employed in more than one position, complete the following:	
Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $	Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)
Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $	Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$	$	$	Rent	$	
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	Total	$	$

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income *Notice:* Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C	Monthly Amount
	$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ❑ Jointly ❑ Not Jointly

ASSETS Description	Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property. LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Cash deposit toward purchase held by:	$			
List checking and savings accounts below		Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Stocks & Bonds (Company name/number & description)	$	Acct. no.		
Life insurance net cash value	$	Name and address of Company	$ Payment/Months	$
Face amount: $		Acct. no.		
Subtotal Liquid Assets	$	Name and address of Company	$ Payment/Months	$
Real estate owned (enter market value from schedule of real estate owned)	$	Acct. no.		
Vested interest in retirement fund	$	Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Net worth of business(es) owned (attach financial statement)	$	Job-Related Expense (child care, union dues, etc.)	$	
Automobiles owned (make and year)	$	Total Monthly Payments	$	
Other Assets (itemize)	$			
Total Assets a.	$	Net Worth (a minus b)	$	Total Liabilities b. $

VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		$	$	$	$	$	$
	Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII. DECLARATIONS

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	❑	❑	❑	❑
b. Have you been declared bankrupt within the past 7 years?	❑	❑	❑	❑
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	❑	❑	❑	❑
d. Are you a party to a lawsuit?	❑	❑	❑	❑
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	❑	❑	❑	❑
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	❑	❑	❑	❑
g. Are you obligated to pay alimony, child support, or separate maintenance?	❑	❑	❑	❑
h. Is any part of the down payment borrowed?	❑	❑	❑	❑
i. Are you a co-maker or endorser on a note?	❑	❑	❑	❑
j. Are you a U.S. citizen?	❑	❑	❑	❑
k. Are you a permanent resident alien?	❑	❑	❑	❑
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	❑	❑	❑	❑
m. Have you had an ownership interest in a property in the last three years?	❑	❑	❑	❑
(1) What type of property did you own—principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home—solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX. ACKNOWLEDGMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described herein; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated herein; (6) any owner or servicer of the Loan may verify or reverify any information contained in the application from any source named in this application, and Lender, its successors or assigns may retain the original and/or an electronic record of this application, even if the Loan is not approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the owner or servicer of the Loan may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER	❑ I do not wish to furnish this information.			**CO-BORROWER**	❑ I do not wish to furnish this information.		
Ethnicity:	❑ Hispanic or Latino	❑ Not Hispanic or Latino		**Ethnicity:**	❑ Hispanic or Latino	❑ Not Hispanic or Latino	
Race:	❑ American Indian or Alaska Native	❑ Asian	❑ Black or African American	**Race:**	❑ American Indian or Alaska Native	❑ Asian	❑ Black or African American
	❑ Native Hawaiian or Other Pacific Islander	❑ White			❑ Native Hawaiian or Other Pacific Islander	❑ White	
Sex:	❑ Female	❑ Male		**Sex:**	❑ Female	❑ Male	

To be Completed by Interviewer This application was taken by: ❑ Face-to-face interview ❑ Mail ❑ Telephone ❑ Internet	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
	Interviewer's Signature Date	
	Interviewer's Phone Number (incl. area code)	

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

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BILLING CODE 4810–AM–C

Appendix C to Part 1002—Sample Notification Forms

1. This Appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 1002.9(a)(1) and (2)(i) of this part. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 1002.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 1002.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 1002.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 1002.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C–1 through C–5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this Appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if ''inadequate down payment'' or ''no deposit relationship with us'' are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

4. If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose ''insufficient bank references,'' not ''insufficient credit references.'' Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check ''other'' and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

5. A creditor may design its own notification forms or use all or a portion of the forms contained in this Appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of § 1002.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§ 1002.9(a)(2)(ii) and 1002.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§ 1002.9(a)(2)(i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of § 1002.14 of this part. Proper use of Form C–10 will satisfy the requirements of § 1002.5(b)(1).

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____
Description of Action Taken: _____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

__Credit application incomplete
__Insufficient number of credit references provided
__Unacceptable type of credit references provided
__Unable to verify credit references
__Temporary or irregular employment
__Unable to verify employment
__Length of employment
__Income insufficient for amount of credit requested
__Excessive obligations in relation to income
__Unable to verify income
__Length of residence
__Temporary residence
__Unable to verify residence
__No credit file
__Limited credit experience
__Poor credit performance with us
__Delinquent past or present credit obligations with others
__Collection action or judgment
__Garnishment or attachment
__Foreclosure or repossession
__Bankruptcy
__Number of recent inquiries on credit bureau report
__Value or type of collateral not sufficient
__Other, specify: ___

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

__Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____
Address: _____
[Toll-free] Telephone number: _____

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____
[[Toll-free] Telephone number: _____]

__Our credit decision was based in whole or in part on information

obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____is below our minimum requirement.
____is insufficient to sustain payments on the amount of credit requested.
____could not be verified.

Your Employment:

____is not of sufficient length to qualify.
____could not be verified.

Your Credit History:

____of making payments on time was not satisfactory.
____could not be verified.

Your Application:

____lacks a sufficient number of credit references.
____lacks acceptable types of credit references.
____reveals that current obligations are excessive in relation to income.
Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[[Toll-free] Telephone number: _____]

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[Reasons for Denial of Credit]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[Your Right to Get Your Consumer Report]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [Name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[Information about Your Credit Score]

[Information about Your Credit Score]

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:
Address: _____
[Toll-free] Telephone number: _____]

If you have any questions regarding this letter, you should contact us at
Creditor's Name: _____
Address: _____
Telephone: _____

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):_____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:
Address: _____
[Toll-free] Telephone number:_____]

You should know that the Federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate Federal enforcement agency listed in Appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right To Request Specific Reasons for Credit Denial

Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
[Toll-free] Telephone number

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:
Address: _____
[Toll-free] Telephone number: _____]

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised

any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Form C–6—Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name
Address
Telephone number
Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application:

_____

We need to receive this information by _____ (date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's name
Creditor's address
Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in Appendix A].

Form C–8—Sample Disclosure of Right To Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in Appendix A].

Form C–9—Sample Disclosure of Right To Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

Form C–10—Sample Disclosure About Voluntary Data Notation

We are requesting the following information to monitor our compliance with the Federal Equal Credit Opportunity Act, which prohibits unlawful discrimination. You are not required to provide this information. We will not take this information (or your decision not to provide this information) into account in connection with your application or credit transaction. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it. [If you choose not to provide the information, we will note it by visual observation or surname].

Appendix D to Part 1002—Issuance of Official Interpretations

1. *Official Interpretations.* Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

2. *Requests for Issuance of Official Interpretations.* A request for an official interpretation should be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

3. *Scope of Interpretations.* No interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 1002—Official Interpretations

Following is an official interpretation of Regulation B (12 CFR Part 1002) issued by the Bureau of Consumer Financial Protection. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Bureau. This commentary is the means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the **Federal Register**. Except in unusual circumstances, official interpretations will be issued only by means of this commentary.

3. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to § 1002.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii–1.

Section 1002.1—Authority, Scope, and Purpose

1(a) Authority and scope.

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor, except for an entity excluded from coverage of this part (but not the Act) by section 1029 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519). If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) (12 CFR Part 1026). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Bureau.* The term *Bureau,* as used in this part, means the Bureau of Consumer Financial Protection.

Section 1002.2—Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i).

1. *Application for credit.* If the applicant applied in accordance with the creditor's procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.

Paragraph 2(c)(1)(ii).

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 1002.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 1002.9.

Paragraph 2(c)(2)(ii).

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with § 1002.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

Paragraph 2(c)(2)(iii).

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

ii. The amount of a transaction exceeds a cash advance or credit limit.

iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

iv. The authorization facilities are not functioning.

v. Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v).

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 1002.9.

2(e) Applicant.

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) Application.

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.

3. *When an inquiry or prequalification request becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under § 1002.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Examples of an application.* An application for credit includes the following situations:

i. A person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

6. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a

creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

2(g) Business credit.

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) Credit.

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). Under Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) Creditor.

1. *Assignees.* The term creditor includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term creditor includes persons such as real estate brokers, automobile dealers, home builders, and home-improvement contractors who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made. These persons must comply with § 1002.4(a), the general rule prohibiting discrimination, and with § 1002.4(b), the general rule against discouraging applications.

2(p) Empirically derived and other credit scoring systems.

1. *Purpose of definition.* The definition under §§ 1002.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See § 1002.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) Open-end credit.

1. *Open-end real estate mortgages.* The term ''open-end credit'' does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) Prohibited basis.

1. *Persons associated with applicant.* As used in this part, prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 1002.4(a), a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ''public assistance'' for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 1002.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* Under this section, procedural requirements of the regulation do not apply to certain types of credit. All classes of transactions remain subject to § 1002.4(a), the general rule barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) Public-utilities credit.

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation's bar against discrimination on a prohibited basis.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 1002.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) Incidental credit.

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in § 1002.3(c).

3(d) Government credit.

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government is covered by this exception, but credit extended to consumers by a Federal or state housing agency does not qualify for special treatment under this category.

Section 1002.4—General Rules

Paragraph 4(a).

1. *Scope of rule.* The general rule stated in § 1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Bureau has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

2. *Examples.*

i. Disparate treatment would exist, for example, in the following situations:

A. A creditor provides information only on ''subprime'' and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. A creditor provides more comprehensive information to men than to similarly situated women.

C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Paragraph 4(b).

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§ 1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c).

1. *Requirement for written applications.* Model application forms are provided in Appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 1002.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 1002.13(b), *Applications through electronic media and Applications through video.*)

Paragraph 4(d).

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Form of disclosures.* Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Section 1002.5—Rules Concerning Requests for Information

5(a) General rules.

Paragraph 5(a)(1).

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section1002.6 governs how information may be used.

Paragraph 5(a)(2).

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for home-improvement loans and home-purchase loans, including some types of loans not covered by § 1002.13.

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2).

1. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

Section 1002.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 1002.5 from obtaining or from

using for any purpose other than to conduct a self-test under § 1002.15.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1. *Prohibited basis*—special purpose credit. In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 1002.8.)

Paragraph 6(b)(2).

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 1002.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in § 1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 1002.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 1002.6(b)(2)(iv). In addition, under § 1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under § 1002.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5).

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.*

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.

Paragraph 6(b)(6).

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7).

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

Paragraph 6(b)(8).

1. *Prohibited basis—marital status.* A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

Section 1002.7—Rules Concerning Extensions of Credit

7(a) Individual accounts.

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a non-spouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) Designation of name.

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (See § 1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(1).

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

Paragraph 7(c)(2).

1. *Procedure pending reapplication.* A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) Signature of spouse or other person.

1. *Qualified applicant.* The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party—but cannot require that it be the spouse. (See commentary to §§ 1002.7(d)(5) and (6).)

Paragraph 7(d)(1).

1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner–even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)–1 concerning guarantors of closely held corporations.)

2. *Joint applicant.* The term ''joint applicant'' refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. *Evidence of joint application.* A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See Appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

Paragraph 7(d)(2).

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be

transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the non-applicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (§ 1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§ 1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3).

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4).

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5).

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See § 1002.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

Paragraph 7(d)(6).

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 1002.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with § 1002.7(d)(2).

7(e) Insurance.

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.

Section 1002.8—Special Purpose Credit Programs

8(a) Standards for programs.

1. *Determining qualified programs.* The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by Federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and state law.

3. *Expressly authorized.* Credit programs authorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under § 1002.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) Rules in other sections.

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by § 1002.9.

8(c) Special rule concerning requests and use of information.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 1002.5 and 1002.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) Special rule in the case of financial need.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 1002.5 and 1002.6, and to require signatures that would otherwise be prohibited by § 1002.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

i. Subsidized housing programs for low-to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by Federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§ 1002.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 1002.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 1002.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. See § 1002.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 1002.9 may appear on either or both sides of a form or letter.

5. *Prequalification requests.* Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(1).

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)-6.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 1002.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or ''incomplete application'' cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of Appendix C to the regulation.

7. *Denial of a telephone application.* When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3).

1. *Coverage.* In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 1002.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in § 1002.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with § 1002.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 1002.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 1002.9(a)(1) is deemed reasonable in all instances.

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in § 1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2).

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§ 1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)–1.

9(c) Incomplete applications.

Paragraph 9(c)(1).

1. *Exception for preapprovals.* The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under § 1002.2(f).

Paragraph 9(c)(2).

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3).

1. *Oral inquiries for additional information.* If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§ 1002.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with § 1002.9(a).

9(g) Applications submitted through a third party.

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.

2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 1002.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 1002.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 1002.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) Designation of accounts.

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.

Section 1002.11—Relation to State Law

11(a) Inconsistent state laws.

1. *Preemption determination—New York.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provisions in the state law of New York are preempted by the Federal law, effective November 11, 1988:

i. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c). Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provision in the state law of Ohio is preempted by the Federal law, effective July 23, 1990:

i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 1002.12—Record Retention

12(a) Retention of prohibited information.

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 1002.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 1002.6.

12(b) Preservation of records.

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 1002.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3).

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) Self-tests.

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

12(b)(7) Preapplication marketing information.

1. *Prescreened credit solicitations.* The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. *Correspondence.* A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

Section 1002.13—Information for Monitoring Purposes

13(a) Information to be requested.

1. *Natural person.* Section1002.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 1002.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 1002.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by

the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C. See* comment 5(a)(2)–2.

13(b) Obtaining of information.

1. *Forms for collecting data.* A creditor may collect the information specified in § 1002.13(a) either on an application form or on a separate form referring to the application. The applicant must be offered the option to select more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.*

i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4. *Video and other electronic-application processes.*

i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by § 1002.13, the creditor may process and retain the application without violating the regulation.

13(c) Disclosure to applicants.

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

13(d) Substitute monitoring program.

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

Section 1002.14—Rules on Providing Appraisal Reports

14(a) Providing appraisals.

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 1002.14(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* This section applies when an applicant requests the renewal of an existing extension of credit and the creditor obtains a new appraisal report. This section does not apply when a creditor uses the appraisal report previously obtained to evaluate the renewal request.

14(a)(2)(i) Notice.

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

14(a)(2)(ii) Delivery.

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

14(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Section 1002.15—Incentives for Self-Testing and Self-Correction

15(a) General rules.

15(a)(1) Voluntary self-testing and correction.

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

15(a)(2) Corrective action required.

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

15(a)(3) Other privileges.

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test defined.

15(b)(1) Definition.

Paragraph 15(b)(1)(i).

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is

not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii).

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of information not privileged.

Paragraph 15(b)(3)(i).

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii).

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate corrective action.

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General requirement.

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the scope of appropriate corrective action.

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of relief.

Paragraph 15(c)(3)(ii).

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii).

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) Scope of privilege.

1. The privilege applies with respect to any examination, investigation or proceeding by Federal, State, or local government agencies relating to compliance with the Act or this part. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a State's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

15(d)(2) Loss of privilege.

Paragraph 15(d)(2)(i).

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii).

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii).

1. A creditor's claim of privilege may be challenged in a court or administrative law

proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of privileged information.

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

Section 1002.16—Enforcement, Penalties, and Liabilities

16(c) Failure of compliance.

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 1002.12 and 1002.13, this section requires that they be corrected prospectively.

Appendix B—Model Application Forms

1. *Freddie Mac/Fannie Mae form—residential loan application.* The uniform residential loan application form (Freddie Mac 65/Fannie Mae 1003), including supplemental form (Freddie Mac 65A/Fannie Mae 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1992 may be used by creditors without violating this part. Creditors that are governed by the monitoring requirements of this part (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 1002.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section ''Information for Government Monitoring Purposes.'' Creditors that are governed by § 1002.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 1002.13(d) may use the form as issued, in compliance with that substitute program.

Appendix C—Sample Notification Forms

1. *Form C–9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

Dated: November 29, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31714 Filed 12–20–11; 8:45 am]

BILLING CODE 4810–AM–P



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Part VII

Bureau of Consumer Financial Protection

12 CFR Parts 1010, 1011, and 1012
Interstate Land Sales Registration Program (Regulations J, K, and L); Interim Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1010, 1011, and 1012

[Docket No. CFPB–2011–0025]

RIN 3170–AA06

Interstate Land Sales Registration Program (Regulations J, K, and L)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Department of Housing and Urban Development's (HUD's) rulemaking authority for the Interstate Land Sales Full Disclosure Act (ILSA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation J (Land Registration); a new Regulation K (Purchasers' Revocation Rights, Sales Practices and Standards); and a new Regulation L (Special Rules of Practice). This interim final rule does not impose any new substantive obligations on persons subject to HUD's existing ILSA regulations.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0025* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW. (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Bill Matchneer or Whitney Patross, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Interstate Land Sales Full Disclosure Act (ILSA) protects consumers by requiring certain land developers to register their plans and to provide prescribed disclosures to prospective purchasers. Developers of subdivisions with one hundred or more nonexempt lots, and developers of condominiums with one hundred or more nonexempt units, must register development plans with the Federal regulator designated by ILSA. These developers must also provide purchasers with a comprehensive disclosure statement known as a property report before a contract of sale is signed. Historically, ILSA has been implemented by the Department of Housing and Urban Development's (HUD's) Interstate Land Sales Registration Program, 24 CFR Parts 1710, 1715 and 1720. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended a number of consumer financial protection laws, including ILSA. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for ILSA to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011. *See* sections 1061 and 1098A of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and ILSA, as amended, the Bureau is publishing for public comment an interim final rule to implement ILSA by establishing a new Regulation J (Land Registration), 12 CFR part 1010; a new Regulation K (Purchasers' Revocation Rights, Sales Practices and Standards), 12 CFR part 1011; and a new Regulation L (Special Rules of Practice), 12 CFR part 1012.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates HUD's Interstate Land Sales Registration Program regulations, 24 CFR parts 1710, 1715, and 1720, as the Bureau's new Regulation J (Land Registration), 12 CFR part 1010; new Regulation K (Purchasers' Revocation Rights, Sales Practices and Standards), 12 CFR part 1011; and new Regulation L (Special Rules of Practice), 12 CFR part 1012, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, the Bureau is preserving the numbering of HUD's ILSA regulations other than the new part numbers. While this interim final rule generally incorporates HUD's existing regulatory text, including model forms and clauses, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably this interim final rule does not impose any new substantive obligations on regulated entities.

B. Specific Changes

This interim final rule makes numerous amendments throughout HUD's existing regulatory text to reflect ILSA's transfer to the Bureau. ''Secretary'' is replaced with ''Director,'' ''Department of Housing and Urban Development'' with ''Bureau of Consumer Financial Protection,'' and ''Department'' with ''Bureau.''

Model language for disclosure and other purposes that appeared in the text of HUD's ILSA regulations has been moved to a new appendix. The model clauses and the sections of HUD's regulations that address these model clauses include:

I. Developers Affirmation for Land Sale § 1710.13(a)(9)
II. Language Notifying Buyer of Option to Cancel Contract § 1710.15(b)(5)(i)
III. Sample Lot Information Statement and Sample Receipt § 1710.15(b)(11)
IV. Request for Multiple Site Subdivision Exemption § 1710.15(c)(1)
V. Request for Regulatory Exemption Order § 1710.16(c)
VI. Developer's Affirmation for Advisory Opinion § 1710.17(b)(3)
VII. Initial and Consolidated Registration Fee Schedule § 1710.35(b)
VIII. Property Report § 1710.100(b)
IX. Sample Page for Statement of Record § 1710.102(e)

X. Language for Warning on Cover Page of Property Report § 1710.105(c)
XI. Sample Entry in Table of Contents for Statement of Record § 1710.106(a)
XII. Required Paragraphs for Risks of Buying Land § 1710.107(a)
XIII. Format for General Information § 1710.108
XIV. Paragraphs To Be Included in the General Report—Title to the Property and Land Use § 1710.109(a)(1)
XV. Statement on Release Provisions § 1710.109(c)(2)(i)(A)
XVI. Warning for Release Provisions § 1710.109(c)(2)(i)(C)(*1*)
XVII. Method and Purpose of Recording Warning § 1710.109(d)(1)(iv)
XVIII. Escrow Statement Disclosure § 1710.109(e)(1)
XIX. Road Chart § 1710.110(b)(3)
XX. Nearby Communities Chart § 1710.110(b)(6)
XXI. Water Chart Form § 1710.111(a)(1)(ii)(B)
XXII. Comfort Station Chart § 1710.111(b)(1)(ii)
XXIII. Sewer Chart § 1710.111(b)(1)(iii)(B)
XXIV. Electric Service Chart § 1710.111(c)(2)
XXV. Recreational Facility Chart § 1710.114(b)
XXVI. Cost Sheet Format § 1710.117(a)
XXVII. Sample Receipt, Agent Certification and Cancellation Page § 1710.118(a)
XXVIII. Affirmation of Senior Executive Officer § 1710.219
XXIX. Form for Certification for Disclosure Documents § 1710.504(a)(2)
XXX. Language To Be Included on Property Report Cover Page § 1710.558(a)(1)
XXXI. Notice of Revocation Rights § 1710.559(a)(1)

Many procedural rules previously contained in 12 CFR part 1720 have been eliminated as duplicative of the procedural rules that the Bureau promulgated in 12 CFR part 1081 earlier this year. Parties proceeding under ILSA should therefore be generally guided by 12 CFR part 1081 to the extent ILSA and the procedural rules contained in 12 CFR part 1012 do not address specific procedures.

Conforming edits have also been made to internal cross-references and addresses for filing applications and notices. Historical references that are no longer applicable, such as Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), and references to effective dates that have passed, have been removed as appropriate.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under ILSA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to ILSA.[2] Accordingly, effective July 21, 2011, the authority of HUD to issue regulations pursuant to ILSA transferred to the Bureau.[3]

ILSA, as amended, directs the Bureau to prescribe regulations to carry out the purposes of ILSA.[4] These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purpose of ILSA, facilitate compliance with ILSA, or prevent circumvention or evasion of ILSA.[5] In its existing regulations, HUD has used this ILSA authority to establish extensive rules that promote the informed purchase of unimproved property and unconstructed condominiums by mandating disclosures and regulating certain development practices.[6]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)[7] generally requires public notice and an opportunity to comment before promulgation of regulations.[8] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[9] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of ILSA authority from HUD to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements. For example, part 1012 contains rules of practice. Additional rules of practice contained in HUD's rule were not restated as unnecessary because the Bureau's rules at 12 CFR part 1081 will apply.

The Bureau's good cause findings are based on the following considerations. As an initial matter, HUD's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority to the Bureau. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying HUD's regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with ILSA and its implementing regulations, and the new regulations will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[10]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to

[2] Public Law 111–203, section 1061(b)(7)(A). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted ''all powers and duties'' that were vested in the HUD Secretary relating to ILSA on the day before the designated transfer date. *Id.* at section 1061(b)(7)(B). Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[3] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

[4] *Id.* section 1098A(2); 15 U.S.C. 1718.

[5] *Id.*

[6] *See* 24 CFR parts 1710, 1715 and 1720.

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b), (c).

[9] 5 U.S.C. 553(b)(3)(A), (B).

[10] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule. To the extent that one-time modifications to forms are required, the Bureau has provided an ample implementation period to allow appropriate advance notice and facilitate compliance without suspending the benefits of the interim final rule during the intervening period.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[11] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulations J, K, and L to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with ILSA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. Although the interim final rule will require covered entities to modify certain disclosures to reflect the transfer of authority to the Bureau, as discussed below, the interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

As discussed above in part II of this **SUPPLEMENTARY INFORMATION**, the interim final rule republishes 31 model forms and clauses with references to HUD replaced with the Bureau and HUD addresses replaced with Bureau addresses. To implement these changes, covered entities may need to make one-time revisions to document templates they use for ILSA compliance. The Bureau believes that costs for these changes will be minimal. It is the Bureau's understanding that a small set of entities maintain these forms and do so in accessible templates which can easily be modified on in-house computers.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulations J, K, and L, as well as regulations implementing thirteen other existing consumer financial laws,[12] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[13] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[14] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[15] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[16]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[17] and the panel requirement applies only when a rulemaking requires an IRFA.[18] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulations J, K, and L. The rule imposes no new, substantive obligations on covered entities and will require only minor, one-time adjustments to certain model forms, as discussed in part III above. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information

[11] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[12] The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[13] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[14] 5 U.S.C. 601 *et seq.*

[15] 5 U.S.C. 603, 604.

[16] 5 U.S.C. 609.

[17] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[18] 5 U.S.C. 609(b).

collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0012.

List of Subjects in 12 CFR Parts 1010, 1011 and 1012

Land registration; Reporting requirements; Certification of substantially equivalent state law; Purchasers' revocation rights; Unlawful sales practices; Advertising disclaimers; Filing assistance; and Adjudicatory proceedings.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection adds parts 1010, 1011, and 1012 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

■ 1. Add Part 1010 to read as follows:

PART 1010—LAND REGISTRATION (REGULATION J)

Subpart A—General Requirements

Sec.

1010.1 Definitions.
1010.2 [Reserved]
1010.3 General applicability.
1010.4 Exemptions—general.
1010.5 Statutory exemptions.
1010.6 One hundred lot exemption.
1010.7 Twelve lot exemption.
1010.8 Scattered site subdivisions.
1010.9 Twenty acre lots.
1010.10 Single-family residence exemption.
1010.11 Manufactured home exemption.
1010.12 Intrastate exemption.
1010.13 Metropolitan Statistical Area (MSA) exemption.
1010.14 Regulatory exemptions.
1010.15 Regulatory exemption—multiple site subdivision—determination required.
1010.16 Regulatory exemption—determination required.
1010.17 Advisory opinion.
1010.18 No action letter.
1010.19 [Reserved]
1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.
1010.21 Effective dates.
1010.22 Statement of record—initial or consolidated.
1010.23 Amendment—filing and form.
1010.24–1010.28 [Reserved]
1010.29 Use of property report—misstatements, omissions or representation of Bureau approval prohibited.
1010.35 Payment of fees.
1010.45 Suspensions.

Subpart B—Reporting Requirements

1010.100 Statement of Record—format.
1010.101 [Reserved]
1010.102 General instructions for completing the Statement of Record.
1010.103 Developer obligated improvements.
1010.104 [Reserved]
1010.105 Cover page.
1010.106 Table of contents.
1010.107 Risks of buying land.
1010.108 General information.
1010.109 Title to the property and land use.
1010.110 Roads.
1010.111 Utilities.
1010.112 Financial information.
1010.113 Local services.
1010.114 Recreational facilities.
1010.115 Subdivision characteristics and climate.
1010.116 Additional information.
1010.117 Cost sheet, signature of Senior Executive Officer
1010.118 Receipt, agent certification and cancellation page.
1010.200 Instructions for Statement of Record, Additional Information and Documentation.
1010.201–1010.207 [Reserved]
1010.208 General information.
1010.209 Title and land use.
1010.210 Roads.
1010.211 Utilities.
1010.212 Financial information.
1010.214 Recreational facilities.
1010.215 Subdivision characteristics and climate.
1010.216 Additional information.
1010.219 Affirmation.
1010.310 Annual report of activity.

Subpart C—Certification of Substantially Equivalent State Law

1010.500 General.
1010.503 Notice of certification.
1010.504 Cooperation among certified states and between certified states and the Director.
1010.505 Withdrawal of state certification.
1010.506 State/Federal filing requirements.
1010.507 Effect of suspension or withdrawal of certification granted under § 1010.501(a): Full disclosure requirement.
1010.508 Effect of suspension of certification granted under § 1010.501(b): Sufficient protection requirement.
1010.552 Previously accepted state filings.
1010.556 Previously accepted state filings—amendments and consolidations.
1010.558 Previously accepted state filings—notice of revocation rights on property report cover page.
1010.559 Previously accepted state filings—notice of revocation rights in contracts and agreements.
Appendix to Part 1010: Standard and Model Forms and Clauses

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Subpart A—General Requirements

§ 1010.1 Definitions.

(a) *Statutory terms.* All terms are used in accordance with their statutory meaning in 15 U.S.C. 1702, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Act means the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701.

Advisory opinion means the formal written opinion of the Director as to jurisdiction in a particular case or the applicability of an exemption under §§ 1010.5 through 1010.15, based on facts submitted to the Director.

Available for use means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

Beneficial property restrictions means restrictions that are enforceable by the lot owners and are designed to control the use of the lot and to preserve or enhance the environment and the aesthetic and economic value of the subdivision.

Date of filing means the date a Statement of Record, amendment, or consolidation, accompanied by the applicable fee, is received by the Director.

Good faith estimate means an estimate based on documentary evidence. In the case of cost estimates, the documentation may be obtained from the suppliers of the services. In the case of estimates of completion dates, the documentation may be actual contracts let, engineering schedules, or other evidence of commitments to complete the amenities.

ILSRP means the Interstate Land Sales Registration Program.

Lot means any portion, piece, division, unit, or undivided interest in land located in any state or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land.

Owner means the person or entity who holds the fee title to the land and has the power to convey that title to others.

Parent corporation means that entity which ultimately controls the subsidiary, even though the control may arise through any series or chain of other subsidiaries or entities.

Principal means any person or entity holding at least a 10 percent financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

Rules means all rules adopted pursuant to the Act, including the

general requirements published in this part.

Sale means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms ''sale'' or ''seller'' include in their meanings the terms ''lease'' and ''lessor''.

Senior Executive Officer means the individual of highest rank responsible for the day-to-day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

Site means a group of contiguous lots, whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility, or any similar object.

Start of construction means breaking ground for building a facility, followed by diligent action to complete the facility.

§ 1010.2 [Reserved]

§ 1010.3 General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision, making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control No. 3170–0012.

§ 1010.4 Exemptions—general.

(a) The exemptions available under §§ 1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under § 1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

(1) Defraud;

(2) To obtain money or property by means of any untrue statement of a material fact, or

(3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or

(4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under § 1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See § 1011.15(f).

(d) Eligibility for exemptions available under §§ 1010.5 through 1010.14 is self-determining. With the exception of the exemptions available under §§ 1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§ 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under § 1010.5. In the sale of lots in the subdivision that are not exempt under § 1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in § 1010.4(b) and (c).

§ 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period. Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.8 Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.9 Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the

purchaser retains ownership of the property affected by the easement.

(b) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.10 Single-family residence exemption.

(a) *General.* The sale of a lot which meets the requirements specified under paragraphs (b) and (c) of this section is exempt from the registration requirements of the Act.

(b) *Subdivision requirements.* (1) The subdivision must meet all local codes and standards.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts, trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c) *Lot requirements.* (1) The lot must be located within a municipality or county where a unit of local government or the state specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

(i) Lot dimensions.

(ii) Plat approval and recordation.

(iii) Roads and access.

(iv) Drainage.

(v) Flooding.

(vi) Water supply.

(vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption, *paved* means concrete or pavement with a bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated.

(4) The unit of local government or a homeowners association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. In any case in which a homeowners association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to signing of a contract or agreement to purchase, provide the purchaser with a good faith written estimate of the cost of carrying out the responsibility over the first ten years of ownership.

(5) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must be obligated to install the facilities within 180 days following closing. For subdivisions which will not have a central water or sewage disposal system, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank.

(6) The contract of sale must require delivery within 180 days after the signing of the sales contract of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through, or under the seller.

(7) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller.

(8) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(d) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.11 Manufactured home exemption.

(a) The sale of a lot is exempt from the registration requirements of the Act when the following eligibility requirements are met:

(1) The lot is sold as a homesite by one party and a manufactured home is sold by another party and the contracts of sale:

(i) Obligate the sellers to perform, contingent upon the other seller carrying out its obligations so that a completed manufactured home will be erected on a completed homesite within two years after the date the purchaser signed the contract to purchase the lot;

(ii) Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;

(iii) Provide that funds received by the sellers will be released to the buyer upon demand if the lot on which the manufactured home has been erected is not conveyed within two years; and

(iv) Contain no provisions which restrict the purchaser's remedy of bringing suit for specific performance.

(2) The homesite is developed in conformance with all local codes and standards, if any, for manufactured home subdivisions.

(3) At the time of closing:

(i) Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line;

(ii) The homesite is accessible by roads;

(iii) The purchaser receives marketable title to the lot; and

(iv) Other common facilities represented in any manner by the developer or agent to be provided are completed or there are letters of credit, cash escrows or surety bonds in the form acceptable to the local government in an amount equal to 100 percent of the estimated cost of completion. Corporate bonds are not acceptable for purposes of the exemption.

(4) For purposes of this section, a manufactured home is a unit receiving a label in conformance with U.S. Department of Housing and Urban Development (HUD) regulations implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401).

(b) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.12 Intrastate exemption.

(a) *Eligibility requirements.* The sale of a lot is exempt from the registration requirements of the Act if the following requirements are met:

(1) The sale of lots in the subdivision after December 20, 1979, is restricted solely to residents of the state in which the subdivision is located unless the sale is exempt under § 1010.5, § 1010.11, or § 1010.13.

(2) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(3) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed; and

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(4) The lot being sold is free and clear of all liens, encumbrances and adverse claims except the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenant or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(5) Prior to the sale the developer discloses in a written statement to the purchaser all qualifying liens, reservations, taxes, assessments and restrictions applicable to the lot purchased. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(6) Prior to the sale the developer provides in a written statement good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(b) *Intrastate Exemption Statement.* To satisfy the requirements of paragraphs (a)(5) and (6) of this section, an Intrastate Exemption Statement containing the information prescribed in each such paragraph shall be given to each purchaser. A State-approved disclosure document may be used to satisfy this requirement if all the information required by paragraphs (a)(5) and (6) of this section is included in this disclosure. In such a case, the developer must obtain a written receipt from the purchaser and comply with all other requirements of the exemption. To be acceptable for purposes of the exemption, the statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. A sample Intrastate Exemption Statement is included in the exemption guidelines.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.13 Metropolitan Statistical Area (MSA) exemption.

(a) *Eligibility requirements.* The sale of a lot which meets the following requirements is exempt from registration requirements of the Act:

(1) The lot is in a subdivision which contains fewer than 300 lots and has contained fewer than 300 lots since April 28, 1969.

(2) The lot is located within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget and characterized in paragraph (b) of this section.

(3) The principal residence of the purchaser is within the same MSA as the subdivision.

(4) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased prior to signing a contract or agreement.

(5) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a nonwaivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract, or, if the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(6) The lot being sold must be free and clear of liens such as mortgages, deeds of trust, tax liens, mechanics' liens, or judgments. For purposes of this exemption, the term *liens* does not include the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other

public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenants, or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(7) Before the sale the developer gives a written MSA Exemption Statement to the purchaser and obtains a written receipt acknowledging that the statement was received. A sample MSA Exemption Statement is included in the exemption guidelines. A State-approved disclosure document may be used to satisfy this requirement if all of the information required by this section is included. The statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or the subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. In descriptive and concise terms, the statement that the developer must give the purchaser shall disclose the following:

(i) All liens, reservations, taxes, assessments, beneficial property restrictions which are enforceable by other lot owners in the subdivision, and adverse claims which are applicable to the lot to be purchased.

(ii) Good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years, or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement.

(8) The developer executes and gives to the purchaser a written instrument designating a person within the state of residence of the purchaser as the developer's agent for service of process. The developer must also acknowledge in writing that it submits to the legal jurisdiction of the state in which the purchaser or lessee resides.

(9) The developer executes a written affirmation for each sale made under this exemption. By January 31 of each year, the developer submits to the Director a copy of the executed affirmation for each sale made during the preceding calendar year or a master affirmation in which are listed all purchasers' names and addresses and the identity of the lots purchased. Individual affirmations must be available for the Director's review at all times during the year. The affirmation must be in the form provided in section I of the appendix to this part: Form for Developer's Affirmation for Land Sale.

(b) *Metropolitan Statistical Area.* Metropolitan Statistical Areas are defined by the Office of Management and Budget generally on the basis of population statistics reported in a census. To determine whether a subdivision is located within an MSA and the boundaries of an MSA, contact the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c).

§ 1010.14 Regulatory exemptions.

(a) *Eligibility requirements.* The following transactions are exempt from the registration requirements of the Act unless the Director has terminated the exemption in accordance with paragraph (b) of this section.

(1) The sale of lots, each of which will be sold for less than $100, including closing costs, if the purchaser will not be required to purchase more than one lot.

(2) The lease of lots for a term not to exceed five years if the terms of the lease do not obligate the lessee to renew.

(3) The sale of lots to a person who is engaged in a bona fide land sales business.

(4) The sale of a lot to a person who owns the contiguous lot which has a residential, commercial or industrial building on it.

(5) The sale of real estate to a government or government agency.

(6) The sale of a lot to a person who has leased and resided primarily on the lot for at least the year preceding the sale.

(b) *Termination.* If the Director has reasonable grounds to believe that exemption from the registration requirements in a particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate eligibility for exemption. The basis for issuing a notice may be the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the lots or real estate that should be disclosed to the purchasers. Proceedings will be governed by § 1012.238.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.15 Regulatory exemption—multiple site subdivision—determination required.

(a) *General.* (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan, is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b) *Eligibility requirements.* The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold ''as is'' with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as ''residential,'' either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent ''on-road'' vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in

writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes:

(i) Contain the non-waivable provision found in section II of the appendix to this part: Language Notifying Buyer of Option to Cancel Contract in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures. If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased (see paragraph (b)(11) of this section).

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 12 CFR 1010.4(b) and (c) and the sales practices and standards in §§ 1011.10 through 1011.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to ILSRP upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right. A sample format for the Statement is provided in section III of the appendix to this part: Sample Lot Information Statement and Sample Receipt.

(c) *Request for Multiple Site Subdivision Exemption.* (1) The developer must file a request for the Multiple Site Subdivision Exemption. The request must be accompanied by a filing fee of $500 (prepared in accordance with § 1010.35(a)) and a sample Lot Information Statement, substantially in the form set forth in section IV of the appendix to this part: Request for Multiple Site Subdivision Exemption.

(2) This exemption will become effective upon issuance of an Exemption Order by the Director.

(d) *Annual Report.* (1) By January 31 of each year the developer will send a report to the Director listing each site and its location available for a sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of $100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Director will automatically terminate eligibility for the exemption as of the Report due date.

(e) *Termination.* If, subsequent to the issuance of an Exemption Order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Director, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by § 1012.238.

§ 1010.16 Regulatory exemption—determination required.

(a) *General.* The Director may exempt from the registration requirements of the Act any subdivision or lots in a subdivision by issuing an order in writing if it is determined that registration is not necessary in the public interest and for the protection of purchasers on the basis of the small amount or limited character of the offering and the requirements contained in paragraph (b) of this section.

(b) *Eligibility requirements.* An exemption order may be issued at the discretion of the Director on the basis of the small amount or limited character of the offering if the following requirements are met:

(1) The subdivision or sales substantially meet the requirements of one of the exemptions available under this chapter.

(2) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(iv) Contains a provision that obligates the developer to deliver to the purchaser within 180 days of the date the purchaser signed the sales contract, a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances.

(3) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and submits a filing fee of $500.00 in

accordance with § 1010.35(a) of this part. This fee is not refundable.

(c) *Request.* The request for an Exemption Order must be substantially in the format set forth in section V of the appendix to this part: Request for Regulatory Exemption Order.

(d) *Supporting documentation.* A request for an exemption order must be accompanied by the following documentation:

(1) A plat of the entire subdivision with the lots subject to the exemption request delineated thereon.

(2) A copy of the contract to be used.

(3) A clear and specific statement detailing how the proposed sales of lots subject to the exemption request substantially complies with one of the available exemption provisions.

(4) A description of the method by which the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

(f) *Termination.* If, subsequent to the issuance of an exemption order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Director, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by § 1012.238.

§ 1010.17 Advisory opinion.

(a) *General.* A developer may request an opinion from the Director as to whether an offering qualifies for an exemption or is subject to the jurisdiction of the Act.

(b) *Requirements.* All requests for Advisory Opinions must be accompanied by the following:

(1) A $500.00 filing fee submitted in accordance with § 1010.35(a). This fee is not refundable.

(2) A comprehensive description of the conditions and operations of the offering. There is no prescribed format for submitting this information, but the developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

(3) An affirmation as set forth in section VI of the appendix to this part: Developer's Affirmation for Advisory Opinion.

§ 1010.18 No Action Letter.

(a) If the sale of lots is subject to the registration requirements of the Act but the circumstances of the sale are such that no affirmative action to enforce the registration requirements is needed to protect the public interest or prospective purchasers, the Director may issue a No Action Letter.

(b) To obtain a No Action Letter a developer must submit a request which includes a thorough description of the proposed transaction, the property involved, and the circumstances surrounding the sale.

(c) The issuance of a No Action Letter will not affect any right which a purchaser has under the Act, and it will not limit future action by the Director if there is evidence to show that affirmative action is necessary to protect the public interest or prospective purchasers. In no event will a No Action Letter be issued after the sale has occurred.

§ 1010.19 [Reserved]

§ 1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.

(a) *Filing.* In order to register a subdivision and receive an effective date, the developer or owner of the subdivision must file a Statement of Record with the Director. The official address to be used is: CFPB Interstate Land Sales, c/o: Armedia LLC, 8221 Old Courthouse Road, Suite 206, Vienna, VA 22182. When the Statement of Record is filed, a fee in the amount set out in § 1010.35(b) must be paid in accordance with § 1010.35(a).

(b) *Form.* The Statement of Record shall be in the format specified in § 1010.100 and shall be completed in accordance with the instructions in §§ 1010.102, 1010.105 through 1010.118, 1010.200, 1010.208 through 1010.216 and 1010.219. It shall be supported by the documents required by §§ 1010.208 through 1010.216 and 1010.219. It shall include any other information or documents which the Director may require as being necessary or appropriate for the protection of purchasers.

(c) *State filings.* A Statement of Record submitted under the provisions of 12 CFR part 1010, subpart C—Certification of Substantially Equivalent State Law, shall consist of the materials designated by the Certification Agreement between the Director and the certified state in which the subdivision is located.

§ 1010.21 Effective dates.

(a) *General.* The effective date of an initial, consolidated or amended Statement of Record is the 30th day after the filing of the latest amendatory material unless the Director notifies the developer in writing prior to such 30th day that:

(1) The effective date has been suspended in accordance with § 1010.45(a), or

(2) An earlier effective date has been determined.

(b) *Suspension of effective date by developer.* (1) A developer, or owner, may request that the effective date of its Statement of Record be suspended, provided there are no administrative proceedings pending against either of them at the time the request is submitted. The request must include any consolidations or amendments which have been made to the initial Statement of Record. Forms for this purpose will be furnished by the Director upon request.

(2) Upon acceptance by the Director, the effectiveness of the Statement of Record shall be suspended as of the date the request was executed by the developer or owner.

(3) The suspension shall continue until the developer, or owner, submits all amendments necessary to bring the registration into full compliance with the Regulations which are in effect on the date of the amendments and the Director allows those amendments to become effective.

§ 1010.22 Statement of record—initial or consolidated.

(a) *Initial Statement of Record.* (1) Except in the case of exempt transactions, an initial Statement of Record shall be filed, and an effective date issued, prior to selling or leasing any lot in a subdivision.

(2) If a developer buys from another developer 100 or more lots from an existing registration, the new developer, or owner, may have to submit a new initial Statement of Record and receive an effective date covering the acquired lots prior to selling or leasing any of those lots.

(3) Changes in principals due to a sale of stock in a corporation or changes in partners or joint venturers which are accomplished in accordance with the partnership or joint venture agreement but which do not cause a change in the title to the land in the subdivision may be submitted as an amendment.

(4) Any initial Statement of Record must be accompanied by a fee, as specified in § 1010.35(b), based upon the number of lots sought to be registered.

(b) *Consolidated Statement of Record.* (1) If the developer intends to sell or lease additional lots as part of the same common promotional plan with lots already registered, a consolidated Statement of Record may be submitted for the additional lots. A fee, as specified in § 1010.35(b) and based on the number of additional lots, must accompany the submission. The additional lots may not be sold or leased until a new effective date is issued.

(2) If the additional lots are simply the result of a replatting of lots previously registered and enumerated in the Property Report and do not include any additional land, the change may be made by an amendment. However, the amendment must be accompanied by a fee, as specified in § 1010.35(b), based on the number of additional lots.

(c) *Consolidated Statement of Record—Form.* A consolidated Statement of Record shall contain the elements listed in paragraphs (c)(1) through (4) of this section. Pages having no changes and documents in previous submissions which apply equally to the additional lots may be included by reference. However, the developer may, at its option, submit the entire format for an initial filing, including copies of previously submitted documents, to expedite the examination process.

(1) Those pages of the Property Report portion and Additional Information and Documentation portion which contain changes which have occurred since the last effective submission, and

(2) A recapitulation or listing of each of the section headings, and subheadings if necessary, of the Additional Information and Documentation portion. Each item of the listing shall contain a statement as to whether or not any change is made in the section; whether any new or additional information is being submitted and, if documentation is added by cross reference, the previous submission in which that documentation may be found, and

(3) Documentation to support the additional lots (*e.g.,* plat maps, topographic maps and general plan to reflect new lots, title information, permits for additional facilities, financial assurances of completion of additional facilities, financial statements) or updated or expanded documents in support of previous submissions, and

(4) The affirmation required by § 1010.219.

(d) *Consolidated Statement of Record amends prior Statement of Record.* A Consolidated Statement of Record shall contain all applicable information for all registered lots in the subdivision except those deleted pursuant to other provisions in these regulations. The resulting Property Report shall be used for all sales in the subdivision, except for those transactions which are exempt from the provisions of the Act or which have been granted an exempt status by the Director, unless the Director has specifically authorized the use of multiple Property Reports.

(e) *Initial Statement of Record—when prior approval to submit is required.* In those subdivisions where there is a disparity between the lots already registered and those sought to be registered because of location, terrain, proposed use of the lots or the amenities to be furnished or available, the developer may present a resume of the differences and request the Director's permission to file a separate initial Statement of Record for the additional lots. Upon consideration of the facts submitted, the Director may allow such a procedure.

(f) *Lots which have been deleted from registration.* Should the developer, for any reason, delete by amendment any registered lots from an effective Statement of Record, those lots must be reregistered by a consolidation and a new effective date issued, before they can be sold or leased. An appropriate fee must accompany the submission.

(g) *Lots sold to individual purchasers.* It is not necessary to delete from the registration those lots which have been sold to individual purchasers for their own use.

§ 1010.23 Amendment—filing and form.

(a) *Filing.* If any change occurs in any representation of material fact required to be stated in an effective Statement of Record, an amendment shall be filed. The amendment shall be filed within 15 days of the date on which the developer knows, or should have known, that there has been a change in material fact.

(b) *Form.* An amendment shall include by reference the prior Statement of Record except for any changes in material fact. A change in material fact shall be specifically described and supported by the same documentation which would be required for an initial submission. Any amendment shall be accompanied by:

(1) A letter from the developer giving a clear and concise description of the purpose and significance of the amendment and referring to the section and page of the Statement of Record which is being amended, and

(2) All pages of the Statement of Record, which have been amended, retyped in the required format to reflect the changes. The ILSRP number of the Statement of Record shall appear at the top of each page of the material submitted.

(c) *Amendments to suspended filings.* Developers wishing to reactivate a suspended filing shall file the following:

(1) Any amendments necessary to bring the filing into compliance, submitted in accordance with paragraphs (a) and (b) of this section;

(2) An activity report in the form prescribed by § 1010.310; and

(3) An amendment fee, if required under § 1010.35(d)(2).

§§ 1010.24–1010.28 [Reserved]

§ 1010.29 Use of property report—misstatements, omissions, or representation of Bureau approval prohibited.

Nothing in these regulations shall be construed to authorize or approve the use of a property report containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein. Nor shall anything in these regulations be construed to authorize or permit any representation that the Property Report is prepared or approved by the Director, ILSRP or the Bureau of Consumer Financial Protection.

§ 1010.35 Payment of fees.

(a) *Method of payment.* (1) Each fee must be paid by:

(i) Certified check, cashier's check, or postal money order made payable to the Treasurer of the United States, with the registration number, when known, and the name, of the subdivision on the face of the check, and mailed to an address specified by the Director; or

(ii) Electronic payment in a manner specified by the Director.

(2) Information regarding the current mailing address or electronic payment procedures is available from: Office of Nonbank Supervision, Bureau of Consumer Financial Protection,1700 G Street NW., Washington, DC 20006.

(b) *Fees for registration.* The fee for each initial and consolidated registration is set forth in section VII of the appendix to this part: Initial and Consolidated Registration Fee Schedule.

(c) *Fee for Exemption Order or Advisory Opinion.* The filing fee for an Exemption Order or an Advisory Opinion (§ 1010.16 or § 1010.17) is $500. This fee is not refundable.

(d) *Amendment fee.* (1) A fee of $800 is charged when an Annual Activity Report reflects an annual ending

inventory of 101 or more unsold registered lots.

(2) A fee of $800 is charged for an amendment to reactivate a Statement of Record subsequent to its suspension, unless the developer has 100 or fewer unsold lots included in the Statement of Record.

§ 1010.45 Suspensions.

(a) *Suspension notice—prior to effective date.* (1) If it appears to the Director that a Statement of Record or an amendment is on its face incomplete or inaccurate in any material respect, the Director shall so advise the developer, by issuing a suspension notice, within a reasonable time after the filing of such materials but prior to the time the materials would otherwise be effective.

(2) A suspension notice issued pursuant to this subsection shall suspend the effective date of the Statement of Record or the amendment. It shall continue in effect until 30 days, or such earlier date as the Director may determine, after the necessary amendments are submitted which correct all deficiencies cited in the notice.

(3) Upon receipt of a suspension notice, the developer has 15 days in which to request a hearing. If a hearing is requested, it shall be held within 20 days of the receipt of the request by the Director.

(b) *Suspension orders—subsequent to effective date.* (1) A notice of proceedings to suspend an effective Statement of Record may be issued to a developer if the Director has reasonable grounds to believe that an effective Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Act or rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading. The Director may, after notice, and after opportunity for a hearing requested pursuant to § 1012.220 within 15 days of receipt of such notice, issue an order suspending the Statement of Record. In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the Statement of Record or otherwise complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective.

(2) If the Director undertakes an examination of a developer or its records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Director or obstructs, or refuses to permit the Director to make such examination, the Director may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective. In accordance with the procedure described in § 1012.235, a hearing may be requested.

(3) Upon receipt of an amendment to an effective Statement of Record, the Director may issue an order suspending the Statement of Record until the amendment becomes effective if the Director has reasonable grounds to believe that such action is necessary or appropriate in the public interest or for the protection of purchasers. In accordance with the procedure described in § 1012.235, a hearing may be requested.

(4) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or its registered agent or is delivered by certified or registered mail to the address of the developer or its authorized agent.

Subpart B—Reporting Requirements

§ 1010.100 Statement of Record—format.

(a) The Statement of Record consists of two portions; the Property Report portion and the Additional Information and Documentation portion.

(b) General format. The Statement of Record shall be prepared in accordance with the format set forth in section VIII of the appendix to this part: Property Report:

§ 1010.101 [Reserved]

§ 1010.102 General instructions for completing the Statement of Record.

(a) *Paper and type.* The Statement of Record shall be on good quality, unglazed white or pastel paper. Letter size paper, approximately 8½ x 11 inches in size, will be used for the Property Report portion and legal size paper, approximately 8½ x 14 inches in size, will be used for the Additional Information and Documentation portion. Side margins shall be no less than 1 inch and no greater than 1½ inches. Top and bottom margins shall be no less than 1 inch. In the preparation of the charts to be included in the Property Report, the developer may vary from the above margin requirements or print the charts lengthwise on the required size paper if such measures are necessary to make the charts readable. The Statement of Record shall be prepared in an easily readable, uniform font.

(b) *Numbering and dating.* Each page of the Statement of Record as submitted to ILSRP shall be numbered and shall include the date of typing or preparation in the lower right hand corner, except in the final printed version of the Property Report portion.

(c) *Signing.* The Statement of Record shall be signed by the senior executive officer of the developer or a designated agent.

(d) *Printing.* The Statement of Record and, insofar as practical, all papers and documents filed as a part thereof, shall be printed, lithographed, photocopied, typewritten or prepared by any similar process which, in the opinion of the Director, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such materials shall be clear and easily readable.

(e) *Headings, subheadings, captions, introductory paragraphs, warnings.* Property Report subject ''headings'' are those descriptive introductory words which appear immediately after section numbers 1010.106 through 1010.116 (*e.g.* § 1010.108 has ''General Information'' and § 1010.111 has ''Utilities''). Each such heading shall be printed in the Property Report in underlined capital letters and centered at the top of a new page. Section numbers shall not be printed in the Property Report. Property Report subheadings are those descriptive introductory words which appear in italics in the regulations at the beginning of paragraphs designated by paragraph letters (a), (b), (c) etc. An example of a subheading is ''water'' found immediately after the paragraph letter (a) in § 1010.111. These subheadings will be printed in the Property Report only if they are relevant to the subject subdivision. If printed these subheadings shall be capitalized and shall begin at the left hand margin of the page. Property Report ''captions'' are those descriptive introductory words which appear in italics in the Regulations at the beginning of subparagraphs designated by numbers (1), (2), (3), etc. An example of such captions is ''Sales Contract and Delivery of Deed'' found immediately after the subparagraph number ''(1)'' in § 1010.109(b). These captions are to be printed in the Property Report only if they are applicable to the subject subdivision. If printed, these captions shall be centered on the page from the side margins, and shall have only the first letter of each word capitalized.

Headings and subheadings will be used in the Property Report in accordance with the sample page appearing in § 1010.102. Introductory paragraphs will follow headings if they are applicable and necessary for a readable entry into the subject matters, but note, the introductory paragraphs for ''Title to the Property and Land Use'' are to be used in every case as provided in § 1010.109(a)(1). Subheadings and captions which do not apply to the subdivision should be omitted from the Property Report portion and answered ''not applicable'' in the Additional Information and Documentation portion, unless specifically required to be included elsewhere in these instructions. Warnings shall be printed substantially as they appear in the instructions in §§ 1010.105 through 1010.118. They shall be printed in capital letters and enclosed in a box as shown on the sample page in § 1010.102. The paragraphs in the Property Report portion need not be numbered. A sample page is set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(f) *Language style.* All information given in the Property Report portion shall be stated in narrative form using plain, concise, everyday language which can be readily understood by purchasers who are unfamiliar with real estate transactions. Excessively long paragraphs should be avoided. Keep them as brief as possible. Use separate paragraphs for different points discussed. Disclose all pertinent facts. Potential consequences to a purchaser must be made clear even though not specifically asked for in the format and the instructions. In the Property Report the pronouns ''you'' and ''your'' shall generally be used in referring to the prospective purchaser and the pronouns ''we,'' ''us,'' and ''our'' shall generally be used in referring to the developer. The Director specifically reserves the right to require modification of the text when the narrative does not meet the standards of this section.

(g) *Format of the Additional Information and Documentation portion of the Statement of Record.* The supporting information and documentation required by these regulations shall be identified by affixing a tab on the right side of the cover sheet of the required information or documentation and by identifying on the tab the section number of the Statement of Record instructions to which the information or documentation corresponds. This information or documentation shall then be placed immediately after the page(s) on which the section number and answers for that section appear. If the data in a document is applicable to more than one section of instructions, the developer may substitute as a document in the second case a statement incorporating the earlier document. Deeds, title policies, subdivision plats or maps and other documentary information required to be contained in the Additional Information and Documentation portion of the Statement of Record need not be on the same size paper as the Statement of Record but, if larger, shall be folded to a size no larger than 8½ x 14 inches. Supporting documents shall be inserted into the binding in such a manner as to permit them to be examined without the necessity of removing them from the binding. This may be accomplished by proper folding or through the use of envelopes.

(h) *Binding.* The Statement of Record shall be bound with the Property Report portion on top, including any documents which may be required to be attached when delivered to the purchaser, followed by the Additional Information and Documentation portion.

(i) *Advertising and promotional material.* No advertising, or promotional material or statements which are self-serving on behalf of the developer or owner may be included in the Statement of Record or resulting Property Report.

(j) *Additional information.* (1) In addition to the information expressly required to be stated in the Statement of Record, there shall be added, and the Director may require, such further material information, documentation and certification as may be necessary in the public interest and for the protection of purchasers or necessary in order to make the statements not misleading in the light of circumstances under which they are made.

(2) The instructions are not all inclusive. The developer shall include any other facts which would have a bearing upon the use by the purchaser of any of the facilities, services or amenities; which would cause or result in additional expenses to the purchaser; which would have an effect upon the use and enjoyment of the lot by the purchaser for the purpose for which it is sold or which would adversely affect the value of the lot.

(k) *Modification of format or content.* The Director may require or permit modification to the content and format of the Property Report to include additional information, to modify or omit required information, or to change the sequence or position of information when such changes are deemed to be in the public interest or for the protection of purchasers.

(l) *Required documentation.* Where the documentation required by the Statement of Record cannot be obtained, the Director may permit the best available alternative documentation to be substituted.

(m) *Final version of property report.* On the date that a Statement of Record becomes effective, the Property Report portion shall become the Property Report for the subject subdivision. The version of the Property Report delivered to prospective lot purchasers shall be verbatim to that found effective by the Director and shall have no covers, pictures, emblems, logograms or identifying insignia other than as required by these regulations. It shall meet the same standards as to grade of paper, type size, margins, style and color of print as those set herein for the Statement of Record, except where required otherwise by these regulations. However, the date of typing or preparation of the pages and the ILSRP number shall not appear in the final version. If the final version of the Property Report is commercially printed, or photocopied by a process which results in a commercial printing quality, and is bound on the left side, both sides of the pages may be used for printed material. If it is typed or photocopied by a process which does not result in a clear and legible product on both sides of the page or is bound at the top, printing shall be done on only one side of the page. Three copies of the final version of the Property Report, in the exact form in which it is delivered to prospective lot purchasers, shall be sent to ILSRP Office within 20 days of the date on which the Statement of Record, amendment, or consolidation is allowed to become effective by the Director. If a Property Report in a foreign language is used as required by § 1011.25(g), three copies of that Property Report together with copies of the translated documents shall be furnished the Director within 20 days of the date on which the advertising is first used. A Property Report prepared pursuant to these regulations shall not be distributed to potential lot purchasers until after the Statement of Record of which it is a part or any amendment to that Statement of Record has been made effective by the Director.

§ 1010.103 Developer obligated improvements.

(a) If the developer represents either orally or in writing that it will provide or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it must be contractually

obligated to do so (see § 1011.15(f)), and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as provided for in § 1011.15(f), and an estimated completion date (month and year) must be stated in the Property Report. However, a developer that has only tentative plans to complete may so state in the Property Report, provided that the statement clearly identifies conditions to which the completion of the facilities are subject and states that there are no guarantees the facilities will be completed.

(b) If a party other than the developer is responsible for providing or completing roads or facilities for water, sewer, gas, electricity or recreational amenities, that entity shall be clearly identified in the Property Report under the categories described in § 1010.110, § 1010.111 or § 1010.114, as applicable. A statement shall be included in the proper section of the Property Report that the developer is not responsible for providing or completing the facility or amenity and can give no assurance that it will be completed or available for use.

§ 1010.104 [Reserved]

§ 1010.105 Cover page.

The cover page of the Property Report shall be prepared in accordance with the following directions:

(a) The margins shall be at least 1 inch.

(b) The next 3 inches shall contain a warning, centered, in ½ inch capital letters in red type with ¼ inch space between the lines which reads as follows: ''READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING''.

(c) The remainder of the page shall contain the language set forth in section X of the appendix to this part: Language for Warning on Cover Page of Property Report beginning ¼-inch below the last line of the warning.

(d)(1) If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the Cover Page must reflect the requirements of the longer period, rather than the seven days.

(2)(i) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(ii) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(iii) The contract provisions are:

(A) A legally sufficient and recordable lot description; and

(B) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to have at least 20 days from the receipt of notice to correct the default or breach; and

(C) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15% of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15% of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(iv) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: ''Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing.''

(e) At the time of submission, the developer may indicate its intention to comply with the red printing by an illustration or by a statement to that effect.

(f) The ''Date of This Report'' shall be the date on which the Director allows the Statement of Record to become effective and shall not be entered until the submission has become effective.

§ 1010.106 Table of contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page on which they appear. An example is set forth in section XI of the appendix to this part: Sample Entry in Table of Contents for Statement of Record.

(b) *Use of ''You'' and ''We.''* At the end of the Table of Contents insert the following remark: ''In this Property Report, the words ''you'' and ''your'' refer to the buyer. The words ''we,'' ''us'' and ''our'' refer to the developer.''

§ 1010.107 Risks of buying land.

(a) The next page shall be headed ''Risks of Buying Land'' and shall contain the paragraphs listed in section XII of the appendix to this part: Required Paragraphs for Risks of Buying Land.

(b) Warnings. If the instructions of the Director require any warnings to be included in the Property Report portion, the following statement shall be added beneath the ''Risks of Buying Land'' under a heading ''Warnings'': ''Throughout this Property Report there are specific warnings concerning the developer, the subdivision or individual lots. Be sure to read all warnings carefully before signing any contract or agreement.'' Both the heading, ''Warnings,'' and the statement shall be printed in capital letters and enclosed in a box.

§ 1010.108 General information.

Insert and complete the format set forth in section XIII of the appendix to this part: Format for General Information.

§ 1010.109 Title to the property and land use.

(a) *General instructions.*(1) Below the heading ''Title to the Property and Land Use'' insert the introductory paragraphs set forth in section XIV of the appendix to this part: Paragraphs to be included in the General Report—Title to the Property and Land Use.

(2) *Information to be provided.* After the above introductory paragraphs provide the information required by the following instructions and questions. Follow a general form identical to the sample page set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(b) *Method of sale:* (1) *Sales contract and delivery of deed.* (i) Will the buyer sign a purchase money or installment contract or similar instrument in connection with the purchase of the lot? When will a deed be delivered?

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under ''Method of Sale'': ''If you fail to make your payments required by the contract, you may lose your lot and all monies paid.''

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption ''Sales contract and delivery of deed'': ''The (indicate subdivision developer, owner, or their creditors) can place a mortgage on or encumber the lots in this subdivision after they are under

contract. This may cause you to lose your lot and any monies paid on it.''

(2) *Type of deed.* What type of deed will be used to convey title to lots in the subdivision?

(3) *Quitclaim deeds.* If a quitclaim deed is to be given to lot purchasers insert the below warning, or a warning which is substantially the same, in the disclosure narrative below the caption ''Quitclaim Deeds.'' This particular warning may be deleted at the direction of the Director if an acceptable attorney's opinion is submitted with the Statement of Record which indicates that a quitclaim deed has a meaning in the jurisdiction where the subdivision is located which is substantially contrary to the effect of this warning. This warning shall be phrased substantially as follows: ''The Quitclaim deed used to transfer title to lots in this subdivision gives you no assurance of ownership of your lot.''

(4) *Oil, gas, and mineral rights.* If oil, gas or mineral rights have been reserved, insert the following statement or one substantially the same in the narrative answer under the caption ''oil, gas, and mineral rights'': ''The (indicate oil, gas, or mineral rights) to (state which lots) in this subdivision will not belong to the purchaser of those lots. The exercise of these rights could affect the use, enjoyment and value of your lot.''

(c) *Encumbrances, mortgages and liens.* (1) *In general.* State whether any of the lots or common facilities which serve the subdivision, other than recreation facilities, are subject to a blanket encumbrance, mortgage or lien. If yes, identify the type of encumbrance (*e.g.,* deed of trust, mortgage, mechanics liens), the holder of the lien, and the lots covered by the lien. If any blanket encumbrance, mortgage, or lien is not current in accordance with its terms, so indicate.

(2) *Release provisions.* (i) Explain the effect of any release provisions of any blanket encumbrance, mortgage or lien and include the one of the following statements that pertains.

(A) If the release clauses are not included in a recorded instrument, insert the statement set forth in section XV of the appendix to this part: Statement on Release Provisions, or one substantially the same in the disclosure narrative below under the caption ''Release Provisions.''

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the mortgage, the statement shall be supported by documentation supplied in § 1010.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser's payments are set aside to pay the release price before any payments are made to the developer.

(C)(*1*) If there are no provisions in the blanket encumbrance for release of an individual purchaser's lot from a blanket encumbrance, include the warning set forth in section XVI of the appendix to this part: Warning for Release Provisions or a warning substantially the same, in the disclosure narrative under the ''Release Provisions'' caption.

(*2*) If the provisions for release of individual lots from the blanket encumbrance may be exercised only by the developer insert the following statement, or one substantially the same, in the disclosure narrative under the ''Release Provisions'' caption: ''The release provisions in the (state the type of encumbrance) on (indicate all or particular lots) in this subdivision may be exercised only by us. Therefore, if we default on the (state type of encumbrance) before obtaining a release of your lot, you may lose your lot and any money you have paid for it.''

(d) *Recording the contract and deed.* (1) *Method or purpose of recording.* (i) State what protection, if any, recording of deeds and contracts gives a lot purchaser in your jurisdiction.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the warning set forth in section XVII of the appendix to this part: Method and Purpose of Recording Warning, or substantially the same warning in the disclosure narrative under the caption ''Method and Purpose of Recording.'' The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2) *Title insurance.* If the developer does not deliver a title insurance policy to the buyer, state that the purchaser should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the lot. Recommend that an appropriate professional should interpret the opinion or policy.

(e) *Payments.* (1) *Escrow.* If purchasers' deposits, down payments, or installment payments are to be placed in a third party controlled escrow or similar account, describe the arrangement including the name and address of the escrow holder or similar person. If there is no such arrangement, insert the statement set forth in section XVIII of the appendix to this part: Escrow Statement. The questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is under the control of an independent third party, allowing a purchaser to receive a return of all money paid in the event of the developer's failure to convey title or the developer's default on any obligation which would otherwise result in the purchaser's loss of that money.

(2) *Prepayments.* Explain any prepayment penalties or privileges in everyday language.

(3) *Default.* What are the developer's or subdivision owners' remedies against a defaulted purchaser?

(f) *Restrictions on the use of your lot.* (1) *Restrictive covenants* (i) Have any restrictive covenants been recorded against the land in the subdivision? If so, do they contain items which require the purchaser to secure permissions, approvals or take any other action prior to using or disposing of his lot (*e.g.,* architectural control, developer's right of first refusal, building deadlines, etc.)? If any of these or similar items are included, explain their meaning and effect upon the purchaser.

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that, since there are no restrictive covenants on the use of the lots, they may be used for purposes which could adversely affect the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: ''A complete copy of these restrictions is available upon request.''

(2) *Easements.* (i) Are there easements which may have an effect on the purchaser's building or lot use plans (*e.g.,* large drainage easements along lot lines, high voltage electric transmission lines, pipe lines or drainage easements which encroach upon the building area of the lot or inhibit its use)?

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g) *Plats, zoning, surveying, permits and environment.* (1) *Plats* (i) Have the subdivision plans and plats of specific units been approved by the regulatory authorities? If the approvals have not been obtained, include a warning to the effect that regulatory authorities have not approved the proposed plats; that they may require significant alterations before they will approve them and they may not allow the land to be used for the purpose for which it is being sold.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2) *Zoning.* For what purpose may the lots be used (*e.g.,* single family homes, camping, commercial)? Does this use conform to local zoning requirements and the restrictive covenants?

(3) *Surveying.* Has each lot been surveyed and is each lot marked for identification? If not, and the purchaser is responsible for the expense, state the estimated cost.

(4) *Permits.* Must the purchaser obtain a building permit before beginning construction on his lot? Where is the permit obtained? Are any other permits necessary to use the lot for the purpose for which it is sold or for construction in connection with its use?

(5) *Environment.* Has there been any environmental impact study prepared which considers the effect of the subdivision on the environment? If a study has been prepared, summarize any adverse conclusions and refer the lot buyer to the proper State Clearinghouse for complete information. If a study has not been prepared, include a statement that ''No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area.'' If the developer does not know whether an environmental impact study has been prepared, or the name and location of the Office where any study made can be found, inquiry should be made to the State or Area Clearinghouse established under the authority of title IV of the Intergovernmental Cooperation Act of 1968.

§ 1010.110 Roads.

(a) *Access to the subdivision.* (1) Is access to the subdivision provided by public or private roads? What type of surface do they have? How many lanes? What is the width of the wearing surface?

(2) Who is responsible for their maintenance? What is the cost to the purchaser, if any? Are any improvements contemplated? If so, when will they begin and when will they be completed? At whose expense?

(b) *Access within the subdivision.* (1) How have legal and physical access by conventional automobile been or will they be, provided to the lots (*e.g.,* road on recorded easement; right of way dedicated to the public; right of way dedicated to use of lot owners)?

(2) Who is responsible for the road construction? Is there any construction cost to the purchaser? Is there any financial assurance of completion? If there is no financial assurance of completion, enter a warning to the effect that no funds have been set aside in an escrow or trust account and there are no other financial arrangements to assure completion of the roads.

(3) How many lanes do the interior roads have? What is the estimated starting date of construction (month and year); the present percentage of construction now complete; the present surface; the estimated completion date (month and year) and what is the final surface to be? If there are separate units or sections in the subdivision which will have different completion dates or different surfaces, the chart in section XIX of the appendix to this part: Road Chart shall be used rather than a narrative paragraph.

(4) Who is responsible for road maintenance? If the roads are to be maintained by a public authority, a property owners' association or some other entity at some time in the future, who is responsible for their maintenance during the interim period? What is the cost to the purchaser during the interim period and after acceptance for permanent maintenance? Will they be maintained so as to provide access to the lots on a year round basis? If not, include a warning which informs the purchaser that access may not be available year round. Identify the months when access may not be available to lots. If there are no arrangements for maintenance, include a warning to the effect that purchasers are responsible for maintaining the roads and that, if maintenance is not performed, the roads may soon deteriorate and access may become difficult or impossible.

(5) If estimated completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the roads are 100 percent completed, no dates are needed.

(6) Complete the chart in section XX of the appendix to this part: Nearby Communities Chart by listing the county seat (identify) and at least two nearby communities. Include at least one community of significant size which offers general services.

(7) If the purchasers will be individually responsible for providing access to their lots and for maintaining that access, what is the estimated cost of construction and maintenance?

§ 1010.111 Utilities.

(a) *Water.* (1) How is water to be supplied to the individual lots (*e.g.,* central system or individual wells)? Of the following items only those which apply to the subdivision need be included.

(i) *Individual system.* (A) If water is to be supplied by an individual private well, cistern or other individual system, what are the total estimated costs of the system, including but not limited to, the costs of installation, storage, any treatment facilities and other necessary equipment?

(B) If individual cisterns or similar storage tanks are to be used, state where water to fill them can be secured; the cost of the water, and its delivery costs for a supply sufficient to serve the monthly needs of a family of four living in a house on a year-round basis. Include a statement to the effect that water stored for extended periods tends to become stale and may acquire an unpleasant taste or odor.

(C) If individual wells are to be used and if the sales contract contains no provisions for refund or exchange in the event a productive well cannot be installed, include a statement to the effect that there is no assurance a productive well can be installed and, if

it cannot, no refund of the purchase price of the lot will be made.

(D) If individual wells or individual cisterns are to be used, include a brief statement to the effect that the purity and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

(E) If there have been no hydrological surveys in connection with the use of individual wells or sources of hauled water for cisterns, include a warning to the effect that there is no assurance of a sufficient supply of water for the anticipated population.

(F) Is a permit required to install the individual system to be used? If so, from whom and where is the permit secured? State the cost of a permit.

(ii) *Central system.* (A) If water is to be provided by a central system, who is the supplier? What is the supplier's address?

(B) Will the water mains be extended in front of, or adjacent to, each lot? When will construction begin? What is the present percentage of completion of the water mains and central supply plant? When will service be available to the individual lots? If the central system is not complete and there are separate units or sections of the subdivision included in the Statement of Record which have different completion dates, then the starting date for construction (month and year), the percentage of construction now complete and the estimated service availability date (month and year) shall be set forth in the chart in section XXI of the appendix to this part: Water Chart Form rather than in a narrative paragraph.

(C) What is the present capacity of the central plant (*i.e.,* how many connections can be supplied)? If the capacity is not sufficient to serve all lots in the Statement of Record and is to be expanded in phases, what is the time-table for each phase to be in service and what will trigger the beginning of the expansion for each phase? If an entity other than the developer or an affiliate or subsidiary of the developer will supply the water for the central system; if the operation of that entity is supervised by a governmental agency and if that entity states it can supply the anticipated population of the development, then information as to the capacity of the plant and a hydrological survey is not necessary. If the entity does not indicate it can supply enough water for the anticipated population or if the capacity of any central system is not sufficient to serve all lots in the Statement of Record, include a warning which describes the limitations and sets forth the number of lots which can now be served.

(D) Have there been any hydrological surveys to determine that a sufficient source of water is available to serve the anticipated population of the subdivision? Has the water in the central system been tested for purity and chemical content? If so, did the results show that the water meets all standards for a public water supply? If there have been no hydrological surveys showing a sufficient supply of water or no tests for purity and chemical content for the central system, include a warning to the effect that there is no assurance of a sufficient supply or that the water is drinkable.

(E) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the water system.

(F) If the developer or an affiliate or subsidiary of the developer operates the central system, have all permits been obtained from the proper agencies for the construction, use and operation of the central system? If not, include a warning to the effect that the required permits, approvals or licenses for construction, operation or use of the water system have not been obtained, therefore there is no assurance the system can be constructed or used.

(G) If previous completion dates given in prior Statements of Record have not been met, state that previous completion dates have not been met and give the previous dates. Underline the answer. If the central water system is 100 percent completed, no dates are needed.

(H) Is the purchaser to pay any construction costs, one-time connection fees, availability fees, special assessments or deposits for the central system? If so, what are the amounts? If not, state that there are no charges other than use fees. If the purchaser will be responsible for construction costs of the water mains, state the cost to install the mains to the most remote lot covered by this report.

(I) If a purchaser wishes to use a lot prior to the date central water is available to it, may the purchaser install an individual system? If so, include the information required for individual systems in § 1010.111(a)(1)(i). Will the purchaser be required to discontinue use of any individual system and connect to the central system when service is available to the lot? If the purchaser is not required to connect to the central system, must any construction costs, connection fees, availability fees, special assessments or deposits in connection with the central system still be paid? If an individual system may not be installed, so state and indicate water will not be available until the central system is extended to the lot.

(J) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(K) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the estimated date and conditions of the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(L) If the supplier of water is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the water system nor the rates are regulated by a public authority.

(M) The warning ''We do not own or operate the central water system so we cannot assure its continued availability for your use'' shall be included unless:

(*1*) The central water system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(*2*) The central water system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(b) *Sewer.* (1) What methods of sewage disposal are to be used (*e.g.,* central system, comfort stations or individual on-site systems such as septic tanks, holding tanks, etc.) in the subdivision? Of the following items, only those which apply to the subdivision need be included.

(i) *Individual systems.* (A) If individual systems are to be used, have the local authorities given general approval to the use of these systems in the subdivision or have they given specific approval for each lot? Are permits necessary? From whom and where are they obtained? Must testing of the lot be done prior to the issuance of a permit? State the cost of a permit and the estimated costs of the system and any necessary tests.

(B) If holding tanks are to be used, state whether pumping and hauling

service is available and the estimated monthly costs of that service for a family of four living in a house on a year-round basis.

(C) If each and every lot has not been approved for the use of an individual on-site system, include a warning to the effect that there is no assurance permits can be obtained for the installation and use of individual on-site systems. If the sales contract contains no provisions for refund or exchange in the event a permit cannot be obtained, include a statement to the effect that there is no assurance an individual on-site system can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If no permit is required for the installation and use of individual on-site systems, explain whether this may have an effect upon the purchaser or the availability of construction or permanent financing.

(E) If the developer has knowledge that permits for the installation of individual on-site systems have been denied; that there have been unsatisfactory percolation tests or that systems have not operated satisfactory in the subdivision, state the number of these rejections, unsatisfactory tests or operations.

(ii) *Comfort stations.* (A) If comfort stations are to be used, how many lots will be served by each station? When will construction be started? When will the station or stations be completed and ready for use? Have the necessary permits been obtained for the construction and use of comfort stations? If the necessary permits have not been obtained, include a warning that the necessary permits, approvals or licenses have not been obtained for the construction and use of the comfort stations; therefore there is no assurance they can be constructed or used. If there are comfort stations located in different units and having different completion dates, the chart found in section XXII of the appendix to this part: Comfort Station Chart shall be used to show the estimated construction starting date (month and year), the present percentage of completion and the date on which they will be used rather than a narrative paragraph.

(B) Who is to construct the comfort stations? Is there any financial assurance of their completion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the comfort stations and there is no assurance the facilities will be completed.

(C) Who will be responsible for maintenance of the comfort stations? Is there any cost to the purchaser for construction, use or maintenance?

(iii) *Central system.* (A) If a central sewage treatment and collection system is being installed, who is responsible for construction of the system? Will the sewer mains be installed in front of, or adjacent to, each lot? When will construction be started (month and year)? When will service be available (month and year)? Who will own and operate the system? Give the name and address of the entity.

(B) What is the present percentage of completion and the present capacity of the system (*i.e.,* number of connections which can be served)? If the present capacity is not sufficient to serve all lots in the Statement of Record and it is to be expanded in phases, what is the time-table for expansion and what will trigger that expansion? If the central system is not complete and there are separate units or sections of the subdivision which have different service availability dates, the chart found in section XXIII of the appendix to this part: Sewer Chart shall be used to show the construction starting date (month and year); the percentage of completion and service availability date (month and year) in each unit or section rather than a narrative paragraph. If sewage treatment facilities are to be supplied by an entity which is regulated by a governmental agency and which is not the developer or an affiliate or subsidiary of the developer and the entity has stated it can serve the anticipated population of the development, then information on capacity need not appear.

(C) If the developer or an affiliate or subsidiary of the developer operates the central system, have all necessary permits been obtained for the construction, operation and use of the central system? Do these permits limit the number of connections or homes which the system may serve? If the permits have not been obtained, enter a warning to the effect that the necessary permits, approvals or licenses have not been obtained for the central sewage system; therefore there is no assurance that the system can be completed, operated or used.

(D) If the system cannot now serve all lots included in the Statement of Record, either because the supplier of the service has not stated it can and will serve all lots or if construction has not reached a stage where all lots can be served or permits to serve all lots have not been obtained, include a warning which states that all lots cannot now be served; the number which can be served and the reason for the lack of capacity.

(E) Will the purchaser pay any construction costs, special assessments, one time connection fees or availability fees? What are the amounts of these charges? If the purchaser is to pay construction costs of the sewer mains, state the cost of installation of the mains to the most remote lot in this Report.

(F) If the purchaser wishes to use the lot prior to the date central sewer service is available, may the purchaser install an individual system? If so, include the information on individual systems required by § 1010.111(b)(1)(i). Will the purchaser be required to discontinue use of the individual system and connect to the central system when service is available? If the purchaser is not required to connect to the central system, must the purchaser still pay any construction costs, connection fees, availability fees, or special assessments? If the purchaser may not install an individual system, so state and indicate service will not be available until the central system reaches the lot.

(G) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(H) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure the completion of the central system; therefore there is no assurance that it will be completed.

(I) If previous completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the central sewage treatment and collection system are 100 percent completed, no dates are needed.

(J) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the date of the transfer and whether there will be any charge for the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(K) If the owner or operator of the central sewer system is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the sewer system nor the rates are regulated by a public authority.

(L) The warning ''We do not own or operate the central sewer system so we cannot assure its continued availability for your use.'' shall be included unless:

(*1*) The central sewer system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(*2*) The central sewer system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(c) *Electricity.* (1) Who will provide electrical services to the subdivision?

(2) Have primary electrical service lines been extended in front of, or adjacent to, all of the lots? If not, when (month and year) or under what conditions will construction begin and when will service be available? If they have not been installed, who is responsible for their construction? If electrical service lines have not been extended in front of, or adjacent to, all lots and there are separate units or sections having different service availability dates, the chart found in section XXIV of the appendix to this part: Electric Service Chart shall be used rather than a narrative paragraph.

(3) If construction of the lines or service to the ultimate consumer is provided by an entity other than a publicly regulated utility, who provides, or will provide, the service? Who will be responsible for maintenance? What is the assurance of completion? If service is not provided by a publicly regulated utility, what charges or assessments will the purchaser pay?

(4) If the primary service lines have not been extended in front of, or adjacent to each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of primary lines? Based on that policy, what would be the cost to the purchaser for extending primary service to the most remote lot in this Report?

(5) If electrical service will not be provided, what is an alternate source (*e.g.,* generators, etc.) and what are the estimated costs?

(6) If the lines are to be installed by some entity other than a publicly regulated utility and if there is no financial assurance of completion, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure construction of the electric lines.

(d) *Telephone.* (1) Is telephone service now, or will it be, available? Who will furnish the service?

(2) Have the service lines been extended in front of, or adjacent to, each of the lots? If not, when, and under what conditions, will construction be started and when will service be available (month and year)?

(3) If the service lines have not been extended in front of, or adjacent to, each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of service lines? Based on that policy, what would be the cost to the purchaser of extending service lines to the most remote lot in this Report?

(e) *Fuel or other energy source.* (1) What fuel, or other energy source, will be available for heating, cooking, etc. in the subdivision? If other than electricity is to be used, describe the availability of the fuel or other energy source. Give the name and address of the supplier. If the fuel is natural gas, when will the mains be installed to the lots? What is the cost to the purchaser for installation fees and connection fees? If oil or propane gas will be used, include the cost of a storage tank.

(2) [Reserved]

§ 1010.112 Financial information.

(a) The information required by paragraphs (b) and (c) of this section need appear only if the answer to the question is an affirmative one.

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer's ability to complete promised facilities and to discharge financial obligations. This statement may be omitted if:

(1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed within 180 days of the signing of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with ILSRP as outlined in § 1010.212(e); and

(iii) Any down payments or deposits are held in an escrow or trust account.

(c) If the developer's financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear: ''A copy of our financial statements for the period ending _____ is available from us upon request.''

(e) The information furnished in § 1010.212(b) may necessitate a warning as to costs and/or feasibility of the completion of the subdivision.

§ 1010.113 Local services.

(a) *Fire protection.* Describe the availability of fire protection and indicate whether it is available year round.

(b) *Police protection.* Describe the availability of police protection.

(c) *Schools.* State whether elementary, junior high and senior high schools are available to residents of the subdivision. Is school bus transportation available from within the subdivision?

(d) *Hospital.* Give the name and location of the nearest hospital and state whether ambulance service is available.

(e) *Physicians and dentists.* State the location of the nearest physicians' and dentists' offices.

(f) *Shopping facilities.* State the location of the nearest shopping facilities.

(g) *Mail service.* If there is no mail service to the subdivision, describe the arrangements the purchasers must make to receive mail service.

(h) *Public transportation.* Is there public transportation available in the subdivision or to nearby towns? If not, give the location of the nearest public transportation and the distance from the subdivision.

§ 1010.114 Recreational facilities.

(a) *Recreational facilities to be covered.* Unless otherwise indicated, all information required by paragraphs (b) and (c) of this section shall be provided for only those recreational facilities which

(1) The developer is contractually responsible to provide or complete and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners; or

(2) For which a third party is responsible and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners.

(b) *Recreational facility chart.* Complete the chart found in section XXV of the appendix to this part: Recreational Facility Chart in accordance with the instructions which follow it. This chart shall immediately follow the § 1010.114 heading. Limit the chart to facilities provided essentially for use of lot buyers.

(1) *Facility.* Identify each recreational facility. Identify closely related facilities (*e.g.,* swimming pool and bathhouse) separately only if their availability dates differ. If any recreational facility is not owned by the developer, insert a warning below the chart phrased substantially as follows: ''We do not own the (name of facility or facilities) so we can not assure its (their) continued availability.''

(2) *Percent complete.* State the present percentage of completion of construction for each recreational facility.

(3) *Estimated date of start of construction.* Insert the estimated date of the start of construction for the facility (month and year).

(4) *Estimated date available for use.* If the construction of the facility is not complete or if it is not available to lot owners for its intended use, indicate the estimated date (month and year) that the facility will be available for use. If the ''estimated date available for use'' for any facility has been amended to delay it to a later date, indicate such delay in a statement immediately below the chart. Underline the response. This statement shall include the name of the facility and the prior estimated availability date, and it shall be referenced to the appropriate facility listed on the chart by use of an asterisk or other appropriate symbol. If a facility is 100 percent completed and in use, no date is needed.

(5) *Financial assurance of completion.* If the construction of the facility is not complete, state whether there is any financial assurance of completion. If none, state ''none.'' If such exists, state the type of assurance (*i.e.,* bond, escrow, or trust). If no documentation for such assurance has been provided in § 1010.214 of the Statement of Record, then do not indicate such assurance on the chart, but in place of such assurance on the chart state ''none.''

(6) *Buyer's annual cost or assessments.* State the lot buyer's annual cost or assessments for using the facility. These costs should include any applicable property owners' association assessment, and the developer's maintenance assessment. If the cost information is lengthy, you may use an asterisk or other appropriate symbol and include the cost information in a paragraph below the chart.

(c) Information to be provided below the recreational facility chart and related warnings.

(1) *Constructing the facilities.* If the facilities are not complete, indicate who is responsible for the construction of the facilities. Indicate whether the purchaser will be required to pay any of the cost of construction of these facilities (estimate and disclose such cost, if any).

(2) *Maintaining the facilities.* Indicate who is responsible for the operation and maintenance of these facilities.

(3) *Facilities which will be leased to lot purchasers.* If no facilities covered here will be leased to a Property Owners' Association or other lot owners in the subject subdivision, omit this caption and any information requested under it from the Property Report. If such leases exist or are anticipated, state which facilities are or will be leased and indicate the term of the lease. Also, state whether the lot owners will have an opportunity to terminate or ratify the lease after control of the Property Owners' Association is turned over to them. Indicate whether the owner of a recreational facility leased to the Property Owners' Association or other lot owners may encumber it and whether the holders of such encumbrances may acquire the leased facilities and not honor the lease. Indicate whether the lease payments may be increased on an escalating or other basis and what costs or expenses, if any, will be borne by the owner. State whether the lease can be assigned or sublet. State how the lease can be terminated.

(4) *Transfer of the facilities.* If there are presently any liens or mortgages on any of these recreational facilities, describe such liens or mortgages. If the developer, or owner of the subdivision, their principals, or subsidiaries, intend to transfer the title of a listed recreational facility in the future, explain at what time, by what type of conveyance, and to whom such transfer will be made. Disclose any adverse effects on, or cost to, lot purchasers which may be caused by such transfer. If any facility is to be transferred to lot owners as a Property Owners' Association or otherwise, state whether the facility will be transferred free and clear of all liens and encumbrances. If not, state the amount of the encumbrance to be assumed and disclose any contractual conditions on such transfer which relate to lot purchasers.

(5) *Permits.* If the necessary permits have not been obtained for the construction and/or use of the facilities, identify the facilities for which such permits have not been obtained and include the following statement, or one substantially the same, in the narrative under the caption ''Permits'': ''The (identify the permit or license) has not been obtained and therefore there is no assurance that the lot owners will be able to use the (identify the facility).''

(6) *Who may use the facilities.* Indicate who will be permitted to use the recreational facilities (*e.g.,* lot owners, their guests, employees of developer, general public). If the general public will be permitted to use the facilities include the following statement in the narrative under the caption ''Who may use the facilities'': ''The (identify the facility) is open to use by the general public and their use of the facility may limit use of it by lot owners.''

§ 1010.115 Subdivision characteristics and climate.

(a) *General topography.* What is the general topography and the major physical characteristics of the land in the subdivision? State the percentage of the subdivision which is to remain as natural open space and as developed parkland. Are there any steep slopes, rock outcroppings, unstable or expansive soil conditions, etc., which will necessitate the use of special construction techniques to build on, or use, any lot in the subdivision? If so, identify the lots affected, and describe the techniques recommended. If any lots in the subdivision have a slope of 20%, or more, include a warning that ''Some lots in this subdivision have a slope of 20%, or more. This may affect the type and cost of construction.''

(b) *Water coverage.* Are any lots, or portions of any lots, covered by water at any time? What lots are affected? When are they covered by water? How does this affect their use for the purpose for which they are sold? Can the condition be corrected? At what cost to the purchaser?

(c) *Drainage and fill.* Identify the lots which require draining or fill prior to being used for the purpose for which they are being sold. Who will be responsible for any corrective action? If the purchaser is responsible, what are the estimated costs?

(d) *Flood plain.* Is the subdivision located within a flood plain or an area designated by any Federal, state or local agency as being flood prone? What lots are affected? Is flood insurance available? Is it required in connection with the financing of any improvements to the lot? What is the estimated cost of the flood insurance?

(e) *Flooding and soil erosion.* (1) Does the developer have a program which provides, or will provide, at least minimum controls for soil erosion, sedimentation or periodic flooding throughout the subdivision?

(2) If there is a program, describe it. Include in the description information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.

(f) *Nuisances.* Are there any land uses which may adversely affect the subdivision (*e.g.,* unusual or unpleasant noises or odors, pollutants or nuisances such as existing or proposed industrial activity, military installations, airports, railroads, truck terminals, race tracks, animal pens, noxious smoke, chemical fumes, stagnant ponds, marshes, slaughterhouses and sewage treatment facilities)? If any nuisances exist, describe them. If there are none, state there are no nuisances which affect the subdivision.

(g) *Hazards.* (1) Are there any unusual safety factors which affect the subdivision (*e.g.,* dilapidated buildings, abandoned mines or wells, air or vehicular traffic hazards, danger from fire or explosion or radiation hazards)? Is the developer aware of any proposed plans for construction which may create a nuisance or safety hazard or adversely affect the subdivision? If there are any existing hazards or if there is any proposed construction which will create a nuisance or hazard, describe the hazard or nuisance. If there are no existing or possible future hazards, state that there are none.

(2) Is the area subject to natural hazards or has it been formally identified by any Federal, state or local agency as an area subject to the frequent occurrence of natural hazards (*e.g.,* tornadoes, hurricanes, earthquakes, mudslides, forest fires, brush fires, avalanches, flash flooding)? If the jurisdiction in which the subdivision is located has a rating system for fire hazard, state the rating assigned to the land in the subdivision and explain its meaning.

(h) *Climate.* What are the average temperature ranges, summer and winter, for the area in which the subdivision is located (*i.e.,* high, low and mean)? What is the average annual rainfall and snowfall?

(i) *Occupancy.* How many homes are occupied on a full- or part-time basis as of (date of submission)?

§ 1010.116 Additional information.

(a) *Property Owners' Association.* (1) Will there be a property owners' association for the subdivision? Has it been formed? What is its name? Is it operating? If not yet formed, when will it be formed? Who is responsible for its formation?

(2) Does the developer exercise, or have the right to exercise, any control over the Association because of voting rights or placement of officers or directors? For how long will this control last?

(3) Is membership in the association voluntary? Will non-member lot owners be subject to the payment of dues or assessments? What are the association dues? Can they be increased? Are members subject to special assessments? For what purpose? If membership in the association is voluntary and if the association is responsible for operating or maintaining facilities which serve all lot owners, include the following statement: ''Since membership in the association is voluntary, you may be required to pay a disproportionate share of the association costs or it may not be able to carry out its responsibilities.''

(4) What are the functions and responsibilities of the association? Will the association hold architectural control over the subdivision?

(5) Are there any functions or services that the developer now provides at no charge for which the association may be required to assume responsibility in the future? If so, will an increase in assessments or fees be necessary to continue these functions or services?

(6) Does the current level of assessments, fees, charges or other income provide the capability for the association to meet its present, or planned, financial obligations including operating costs, maintenance and repair costs and reserves for replacement? If not, how will any deficit be made up?

(b) *Taxes.* (1) When will the purchaser's obligation to pay taxes begin? To whom are the taxes paid? What are the annual taxes on an unimproved lot after the sale to a purchaser? If the taxes are to paid to the developer, include a statement that ''Should we not forward the tax funds to the proper authorities, a tax lien may be placed against your lot.''

(2) If the subdivision is encompassed within a special improvement district or if a special district is proposed, describe the purpose of the district and state the amount of assessments. Describe the purchaser's obligation to retire the debt.

(c) *Violations and litigations.* This information need appear only if any of the questions are answered in the affirmative. Unless the Director gives prior approval for it to be omitted, a brief description of the action and its present status or disposition shall be given.

(1) With respect to activities relating to or in violation of a Federal, state or local law concerned with the environment, land sales, securities sales, construction or sale of homes or home improvements, consumer fraud or similar activity, has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial interest, been:

(i) Disciplined, debarred or suspended by any governmental agency, or is there now pending against them an action which could result in their being disciplined, debarred or suspended or,

(ii) Convicted by any court, or is there now pending against them any criminal proceedings in any court? ILSRP suspension notices on pre-effective Statements of Record and amendments need not be listed.

(2) Has the developer, the owner of the land, any principal, any person holding a 10% or more financial or ownership interest in either, or any officer or director of either, filed a petition in bankruptcy? Has an involuntary petition in bankruptcy been filed against it or them or have they been an officer or director of a company which became insolvent or was involved, as a debtor, in any proceedings under the Bankruptcy Act during the last 13 years?

(3) Is the developer or any of its principals, any parent corporation or subsidiary, any officer or director a party to any litigation which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities? If so, include a warning which describes the possible effects which the action may have upon the subdivision.

(d) *Resale or exchange program.* (1) Are there restrictions which might hinder lot owners in the resale of their lots (*e.g.,* a prohibition against posting signs, limitations on access to the subdivision by outside brokers or prospective buyers; the developer's right of first refusal; membership requirements)? If so, briefly explain the restrictions.

(2) Does the developer have an active resale program? If the answer is ''no,'' include the following statement: ''We have no program to assist you in the sale of your lot.''

(3) Does the developer have a lot exchange program? If the answer is ''yes,'' describe the program; state any conditions and indicate if the program reserves a sufficient number of lots to accommodate all those wishing to participate. If there is no program or if sufficient lots are not reserved, include one of the following statements as applicable: ''We do not have any provision to allow you to exchange one lot for another'' or ''We do not have a program which assures that you will be able to exchange your lot for another.''

(e) *Unusual situations.* This topic need appear only if one or more of the following cases apply to the subdivision, then only the applicable subject, or subjects, will appear.

(1) *Leases.* What is the term of the lease? Is it renewable? Is it recordable? Can creditors of the developer, or owner, acquire title to the property without any obligation to honor the terms of the lease? Are the lease payments a flat sum or are they graduated? Can the lessee mortgage or otherwise encumber the leasehold? Will the lessee be permitted to remove any improvements which have been installed when the lease expires or is terminated?

(2) *Foreign subdivision.* (i) Is the owner or developer of the subdivision a foreign country corporation? If legal action is necessary to enforce the contract, must it be taken in the courts of the country where the subdivision is located?

(ii) Does the country in which the subdivision is located have any laws which restrict, in any way, the ownership of land by aliens? If so, what are the restrictions?

(iii) Must an alien obtain a permit or license to own land, build a home, live, work or do business in the country where the subdivision is located? If so, where is such permit or license secured; for how long is it valid and what is its cost?

(3) *Time sharing.* (i) How is title to be conveyed? How many shares will be sold in each lot? How is use time allocated? How are taxes, maintenance and utility expenses divided and billed? How are voting rights in any Association apportioned? Are there management fees? If so, what are their amounts and how are they apportioned?

(ii) Is conveyance of any portion of the lot contingent upon the sale of the remaining portions? Is the initial buyer responsible for any greater portion of the expense than his normal share until the remaining interests are sold? If the purchase of any of the portions is financed, will the default of one owner have any effect upon the remaining owners?

(4) *Memberships.* (i) Does the purchaser receive any interest in title to the land? What is the term of the membership? Is it renewable? What disposition is made of the membership in the event of the death of the member? Are the lots individually surveyed and the corners marked? If not, how does the member identify the area which the member is entitled to use? What is the approximate square footage the member is entitled to use? Are there different classes of membership? How are the different classes identified and what are the differences between them?

(ii) If the member does not receive any interest in the title to the land, include a warning to the effect that ''you receive no interest in the title to the land but only the right to use it for a certain period of time.''

(f) *Equal opportunity in lot sales.* State whether or not the developer is in compliance with title VIII of the Civil Rights Act of 1968 by not directly or indirectly discriminating on the basis of race, color, religion, sex, national origin, familial status, and handicap in any of the following general areas: Lot marketing and advertising, rendering of lot services, and in requiring terms and conditions on lot sales and leases. An affirmative answer cannot be given if the developer, directly or indirectly, because of race, color, religion, sex, national origin, familial status, or handicap is:

(1) Refusing to sell or lease lots after the making of a bona fide offer or to negotiate for the sale or lease of lots or is otherwise making unavailable or denying a lot to any person, or

(2) Discriminating against any person in the terms, conditions or privileges in the sale or leasing of lots or in providing services or facilities in connection therewith, or

(3) Making, printing, publishing or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or leasing of lots that indicates any preference, limitation or discrimination against any person, or

(4) Representing to any person that any lot is not available for inspection, sale or lease when such lot is in fact available, or

(5) For profit, inducing or attempting to induce any person to sell or lease any lot by representations regarding the entry or non-entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status, or handicap.

(g) *Listing of lots.* Provide a listing of lots which shall consist of a description of the lots included in the Statement of Record by the names or number of the section or unit, if any; the block number, if any; and the lot numbers. The lots shall be listed in the most efficient and concise manner. If the filing is a consolidation, the listing shall include all lots registered to date in the subdivision, except any which have been deleted by amendment.

§ 1010.117 Cost sheet, signature of Senior Executive Officer.

(a) *Cost sheet—Format.* (1) The cost sheet shall be prepared in accordance with the format found in section XXVI of the appendix to this part: Cost Sheet Format and paragraph (a)(2) of this section.

(2) *Cost sheet instructions.* (i) All amounts for cost sheet items will be entered before the purchaser signs the receipt. However, any costs that are identical for all lots may be pre-printed.

(ii) If a central water or sewer system will be used in all or part of the subdivision and a private system in all or other parts, then the portion that does not apply to the purchaser's lot shall be crossed out.

(iii) If individual private systems may be used prior to the availability of service from any central system and the purchaser is not required to connect to any central system, both figures may be entered or only the highest cost figures may be used with a parenthetical explanation or footnote. If the purchaser is required to connect to any central system and discontinue the use of his private system when central service is

available, both cost figures shall be given, together with an explanation or footnote.

(iv) If there is a one time, lump sum ''availability fee'' which is assessed to the purchaser in connection with a central utility, include under ''other'' and identify.

(v) Dues and assessments need be included only if they are involuntary regardless of use.

(vi) At the discretion of the Director, where there is extreme diversity in the figures for different areas of the subdivision, variations may be permitted as to whether the figures will be printed, entered manually, or a range of costs used or any combination of these features.

(vii) The estimated annual taxes shall be based upon the projected valuation of the lot after sale to a purchaser.

(b) *Signature of the Senior Executive Officer.* The Senior Executive Officer or a duly authorized agent shall sign the property report. Facsimile signatures may be used for purposes of reproduction of the property report.

§ 1010.118 Receipt, agent certification, and cancellation page.

(a) *Format.* The receipt, agent certification and cancellation page shall be prepared in accordance with the sample found in section XXVII of the appendix to this part: Sample Receipt, Agent Certification and Cancellation Page.

(b) The original and one copy of this executed page shall be attached to the Property Report delivered to prospective purchasers. After the purchaser has signed the receipt and the salesman has signed the certification, the copies can be retained by the developer for a period of three years from the date of execution or the term of the contract, whichever is the longer. Upon demand by the Director, the developer shall, without delay, make the copies of these receipts and certifications available for inspection by the Director or the developer shall forward to the Director any of the receipts and certifications, or copies thereof, as the Director may specify.

(c) If the transaction takes place through the mails, the cost figures shall be entered and the person most active in dealing with the prospective purchaser shall sign the certification prior to mailing the Property Report to the purchaser. Otherwise, the certification shall be executed in the presence of the purchaser.

(d) The date of Report appearing on the receipt shall be the same as that appearing on the cover sheet of the Property Report.

(e) Notification of cancellation by mail shall be considered given at the time post-marked.

§ 1010.200 Instructions for Statement of Record, Additional Information and Documentation.

The Additional Information and Documentation portion of the Statement of Record shall contain the statements and documents required in §§ 1010.208 through 1010.219. Each section number and its associated heading and each paragraph letter or number and their associated subheadings or captions must appear in this portion. Following each heading, subheading, or caption printed in this portion, the registrant shall insert an appropriate response. If a heading, subheading, or caption does not apply to the subdivision, it shall be followed by the words ''not applicable''. Immediately after the page(s) on which the section number and answers for that section appear, insert the information or documents which support that section. In addition to the statements and documentation expressly required there shall be added any further material, information, documentation and certifications as may be necessary in the public interest and for the protection of purchasers or to cause the statements made to be not misleading in the light of the circumstances under which they are made.

§§ 1010.201–1010.207 [Reserved]

§ 1010.208 General information.

(a) *Administrative information.* (1) State whether the material represents an initial Statement of Record or a consolidated Statement of Record. If it is a consolidated Statement of Record, identify the original ILSRP number assigned to the initial Statement of Record. State whether subsequent Statements of Record will be submitted for additional lots in the subdivision.

(2) Has the developer submitted a request for an exemption for the subdivision?

(3) List the states in which registration has been made by the developer for the sale of lots in the subdivision.

(4) If any state listed in paragraph (a)(3) of this section has not permitted a registration to become effective or has suspended the registration or prohibited sales, name the state involved and give the reasons cited by the state for their action.

(5) State whether the developer has made, or intends to make, a filing with the U.S. Securities and Exchange Commission (SEC) which is related in any way to the subdivision. If a filing has been made with the SEC, give the SEC identification number; identify the prospectus by name; date of filing and state the page number of the prospectus upon which specific reference to the subdivision is made. Any disciplinary action taken against the developer by the SEC should be disclosed in §§ 1010.116 and 1010.216.

(b) *Subdivision information.* (1) If this is a consolidated Statement of Record, state the number of lots being added, the number of lots in prior Statements of Record and the new total number of lots. The Director must be able to reconcile the numbers stated here with the title evidence; the plat maps and the disclosure in § 1010.108.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number of acres being added, the number of acres in prior Statements of Record and the new total number of acres. State the total acreage owned in the subdivision, the number of acres under option or similar arrangement for acquisition of title to the land and the total acreage to be offered pursuant to the same common promotional plan.

(3) State whether any lots have been sold in this subdivision since April 28, 1969, and prior to registration with ILSRP. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the ILSRP number assigned to the exemption, if any.

(c) *Developer information.* (1) State the name, address, Internal Revenue Service number and telephone number of the owner of the land. If the owner is other than an individual, name the type of legal entity and list the interest, and extent thereof, of each principal. Identify the officers and directors.

(2) If the developer is not the owner of the land, state the developer's name, address, Internal Revenue Service number and telephone number. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. Identify the officers and directors.

(3) If you wish to appoint an authorized agent, state the agent's name, address and telephone number and scope of responsibility. This shall be the party designated by the developer to receive correspondence, service of process and notice of any action taken by ILSRP. In all Statements of Record, including those for foreign subdivisions, the authorized agent shall be a resident of the United States. A change of the

authorized agent will require an appropriate amendment.

(4) State whether the owner of the land, the developer, its parent, subsidiaries or any of the principals, officers or directors of any of them are directly or indirectly involved in any other subdivision containing 100 or more lots. If so, identify the subdivision by name, location, and ILSRP number, if any.

(5) State whether the owner or developer is a subsidiary corporation. If either the owner or developer is a subsidiary corporation or if any of the principals of the owner or developer are corporate entities, name the parent and/or corporate entity and state the principals of each to the ultimate parent entity.

(d) *Documentation .* (1) Submit a copy of the property report, subdivision report, offering statement or similar document filed with the state or states with which the subdivision has been registered.

(2) Submit a copy of a general plan of the subdivision. This general plan must consist of a map, prepared to scale, and it must identify the various proposed sections or blocks within the subdivision, the existing or proposed roads or streets, and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map must at least show the area included in the Statement of Record. In a consolidated Statement of Record, show areas being added, as well as the areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be included by reference.

(3)(i) If the developer is a corporation, submit a copy of the articles of incorporation, with all amendments; a copy of the certificate of incorporation or a certificate of a corporation in good standing and, if the subdivision is located in a state other than the one in which the original certificate of corporation was issued, a certificate of registration as a foreign corporation with the state where the subdivision is located.

(ii) If the developer is a partnership, unincorporated association, joint stock company, joint venture or other form of organization, submit a copy of the articles of partnership or association and all other documents relating to its organization.

(iii) If the developer is not the owner of the land, submit copies of the above documents for the owner.

§ 1010.209 Title and land use.

(a) *General information.* (1) State whether the developer has reserved the right to exchange or withdraw lots after a purchaser has signed a sales contract (*e.g.,* for prior sales, failure to pass credit check). If yes, indicate this authority and make reference to the applicable paragraph in the sales contract or other document.

(2) State whether there is a provision giving purchasers an option to exchange lots. If yes, indicate this and make reference to the applicable paragraph in the sales contract or other document.

(3) State whether the developer knows of any instruments not of record which, if recorded, would affect title to the subdivision. If yes, copies of these instruments shall be submitted, except that copies of unrecorded contracts for sales of lots in the subdivision need not be submitted.

(4)(i) Identify the Federal, State, and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, and any existing or proposed facilities, common areas or improvements to the subdivision.

(ii) Describe or identify the land or facilities affected; the permit, approval or license required; and indicate whether the permit, approval or license has been obtained by the developer.

(iii) If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state.

(iv) Answers must specifically cover the areas of environmental protection; environmental impact statements; and construction, dredging, bulkheading, etc. that affect bodies of water within or around the subdivision. Also include licenses or permits required by water resources boards, pollution control boards, river basin commissions, conservation agencies or similar organizations.

(5) State whether it is unlawful to sell lots prior to the final approval and recording of a plat map in the jurisdiction where the subdivision is located.

(b) *Title evidence.* (1) Submit title evidence that specifically states the status of the legal and equitable title to the land comprising the lots covered by the Statement of Record and any common areas or facilities disclosed in the Property Report. Title evidence need not be submitted for those common areas and facilities which are not owned by the developer.

(2) Acceptable title evidence shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Director. Previously issued title evidence may be updated to the date referred to in the preceding sentence by endorsements or attorneys' opinions of title.

(3) The developer shall amend the title evidence to reflect the change in status of title of any previously registered, reacquired lots unless their status is at least as marketable as they were when first offered for sale by the developer as registered lots.

(c) *Forms of acceptable title evidence.* (1) An original or a copy of a signed owner's or mortgagee's policy of title insurance, title commitment, certificate of title or similar instrument issued by a title company authorized by law to issue such instruments in the state in which the subdivision is located. Title evidence that limits insurance or negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner is not acceptable;

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the state in which the property is located. The title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, provided it meets all general title evidence requirements of this section and a copy of the registration certificate of title is submitted. Title opinions that limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner are not acceptable.

(d) *Title searches.* The required evidence of the status of title shall be based on a search of all public records which may contain documents affecting title to the land or the developer's ability to deliver marketable title. The search must cover a period which is required or generally considered adequate for insuring marketability of title in the jurisdiction in which the subdivision is located. Such search shall include an examination of at least the documents listed in paragraphs (d)(1) through (5) of this section. This search may be accomplished through the use of a title insurance company title plant, the information in which is based on current searches of the appropriate and necessary documents, including as a minimum those listed immediately above. For any attorney's title opinion based on Torrens certificates of title, the title search need only go beyond the original time of registration of the

certificate of title for those types of encumbrances which were not conclusively settled by the proceedings at the time of such registration. In such cases, the required statement shall clearly reflect the documents and periods searched.

(1) The records of the recorder of deeds or similar authority;

(2) U.S. Internal Revenue Liens;

(3) The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;

(4) The tax records;

(5) Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title of the land, include a statement of the legal authority for that opinion.

(e) *Items to be included in the title evidence.* The acceptable title evidence must include the following information, instruments and statements and need not be repeated or duplicated elsewhere in the Statement of Record.

(1) A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. This legal description shall be adequate for conveying land in the jurisdiction in which the subdivision is located. If this legal description is based on a recorded plat, the lot numbers, recording place, book name, book number, and page number shall be stated in the description. If this legal description is given by metes and bounds, the title evidence shall include or be accompanied by a certified statement of the preparer of the title evidence, a licensed attorney, or an engineer or surveyor, indicating that all subject lots, common areas, and common facilities are encompassed within the metes and bounds description in the evidence. If at any time after the submission of the legal description required above, the description of the subject land is changed or found to be in error, a correcting amendment shall be made to the Statement of Record.

(2) The name of the person(s) or other legal entity(ies) holding fee title to the property described.

(3) The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

(4) A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in paragraph (e)(2) or (3) of this section, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which they are based. When an objection or exception to title affects less than all of the property covered by this Statement of Record, the title evidence shall specifically note what portion of the property is so affected.

(5) Copies of all instruments in the public records specifically referred to in paragraph (e)(4) of this section. Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify such abstracts and if the abstracts contain a material portion of the recorded instruments sufficient to determine the nature and effect of such instruments. Also include copies of any release provisions, relating to encumbrances on the property described, which are not included in the documents otherwise required by this section.

(6) If an attorney's title opinion has been submitted pursuant to this section which has been based on a Torrens land registration certificate of title, submit a copy of such certificate.

(f) *Supplemental title information.* (1) If there is a holder of an ownership interest in the land other than the developer, submit a copy of any documentation which evidences the developers' authorization to develop and/or sell the land.

(2) Submit copies of any trust deeds, deeds in trust, escrow agreements or other instruments which purport to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property unless they have been previously provided as part of ''title evidence'' submitted pursuant to paragraph (e) of this section.

(3)(i) Submit copies of all forms of contracts or agreements and notes to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures: ''You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.''

(ii) If the purchaser is entitled to a longer revocation period by operation of state law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the requirements of the longer period, rather than the seven days. This language shall be consistent with that shown on the cover page (see § 1010.105).

(iii) The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(iv) If it is represented that the developer will provide or complete roads or facilities for waters, sewer, gas, electric service or recreational amenities, the contract must contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities (see § 1011.15(f)).

(4) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(g) *Plat maps, environmental studies and restrictions.* (1) *Plat maps.* (i) In those jurisdictions where it is unlawful to sell lots prior to final approval and recording of the plat, and in those cases where a plat has been recorded, submit a copy of the recorded plat. This plat should be an exact copy of the recorded document. It should reflect the signatures of the approving authorities and bear a stamp or notation by the recorder of deeds, or similarly constituted officer, as to the recording data.

(ii) If the plat has not been approved by the local authorities nor recorded, and if it is not unlawful to sell lots prior to final approval and recording, submit a map which has been prepared to scale and which shows the proposed division of the land, the lot dimensions and their relation to proposed or existing streets and roads. The map shall contain sufficient engineering data to enable a surveyor to locate the lots.

(iii) Whether recorded or unrecorded, the plat or map should show:

(A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivision where the land is located.

(B) A clear delineation of each of the lots and any common areas or facilities.

(C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.

(D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting streets, ways, etc.

(E) The location of the section or unit encompassing the lots in relationship to the larger tract, or tracts, in the subdivision.

(F) The delineation of any flood plains or flood control easements affecting any of the lots.

(iv) The plat, or map shall be prepared by a licensed surveyor or engineer.

(v) If all lots on each page of the plat are not included in the Statement of Record with which the plat or map is submitted, then the lots which are to be included in the Statement of Record shall be identified on the plat or map; a legend describing the method of identification shall be entered on the face of the plat or map and the number of lots so identified entered in the lower right hand corner of the plat map. The Director must be able to reconcile the totals of these numbers with the information given in §§ 1010.108 and 1010.208 of the Statement of Record and the title evidence.

(2) *Environmental impact study.* If the developer is aware of any environmental impact study which considers the effect of the subdivision on the environment, submit a summary of that study.

(3) *Restrictions or covenants.* Submit a copy of any recorded or proposed restrictions or covenants for the subdivision if not submitted elsewhere in this Statement of Record. A copy of these restrictions or covenants shall be delivered to a prospective purchaser upon request. A supply shall be maintained at whatever place or places as will be necessary to allow immediate delivery upon request.

§ 1010.210 Roads.

(a) State the estimated cost to the developer of the proposed road system.

(b) If the developer is to complete any roads providing access to the subdivision, submit copies of any bonds or escrow agreements which have been posted to guarantee completion thereof.

(c) Submit copies of any bonds or escrow agreements which have been posted to assure completion of the roads within the subdivision.

(d) If the interior roads are to be maintained by a public authority, submit a copy of a letter from that authority which states that the roads have been, or the conditions upon which they will be, accepted for maintenance and when.

§ 1010.211 Utilities.

(a) *Water.* (1) State the estimated cost to the developer of the central water system.

(2) If water is to be supplied by a central system, furnish a letter from the supplier that it will supply the water. If the system is operated by a governmental division or by an entity whose operations are regulated by a governmental agency but which is not affiliated with or under the control of the developer, the letter shall include a statement that the supply of water will be sufficient to serve the anticipated population of the subdivision or how many homes or connections it can and will serve and that the water is tested at regular intervals and has been found to meet all standards for a public water supply.

(3) If the water is to be supplied by individual wells, by an entity which is not regulated by a governmental agency, by the developer or by an entity which is affiliated with or controlled by the developer, submit a copy of any engineers' reports or hydrological surveys which indicate there is a sufficient supply of water to serve the anticipated population of the subdivision.

(4) If the supplier of water is not in one of the categories in paragraph (a)(2) of this section, submit a copy of a letter or report from a cognizant health officer, or from a private laboratory licensed by the state to perform tests and issue reports on water, to the effect that the water was found to meet all drinking water standards required by the state for a public water system.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system, including any phases which are to be constructed in the future, has been posted by the developer or an entity not regulated by a government agency, furnish a copy of the document.

(6) Furnish a copy of any permits which have been obtained by the developer or any entity affiliated with or under the control of the developer in connection with the construction and operation of the central system. If a permit is required to install individual wells, submit a letter from the proper authority which states the requirements for obtaining the permit and that there is no objection to the use of individual wells in the subdivision.

(7) Furnish a copy of any membership agreement or contract which allows or requires lot owners to use the central water system. If this document is furnished elsewhere in the Statement of Record, reference to it may be made here.

(b) *Sewer.* (1) State the estimated cost to the developer of the central sewer system.

(2) If sewage disposal is to be by individual on-site systems, furnish a letter from the local health authorities giving general approval to the use of these systems in the subdivision or giving specific approval for each and every lot.

(3) If sewage disposal is to be through a central system which is owned and operated by a governmental division, or by an entity whose operations are regulated by a governmental agency but which is not affiliated with, or under the control of, the developer, furnish a letter from the entity that it will provide this service and that its treatment facilities have the capacity to serve the anticipated population of the subdivision or how many homes or connections it can and will serve.

(4) Furnish a copy of any permits obtained by the developer or any entity affiliated with or under the control of the developer, for the construction and operation of the central sewer system or construction and use of any other method of sewage disposal contemplated for the subdivision except those to be obtained by individual lot owners at a later date.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system or other system for which the developer is responsible, and any future expansion, has been posted, furnish a copy of the document.

(6) Furnish a copy of any membership agreement of contract which allows, or requires, the lot owners to use the central system. If this document is furnished elsewhere in the Statement of Record, it may be included here by reference.

(c) *Electricity.* Give an estimate of the total construction cost to be expended by the developer and submit any instrument providing financial assurance of completion of the facilities which has been posted by the developer.

(d) *Telephone.* Give an estimate of the total construction cost to be expended by the developer and submit a copy of any instrument providing financial assurance of the completion of the facilities which has been posted by the developer.

§ 1010.212 Financial information.

(a) *Financing of improvements.* Describe the financing plan that is to be used in financing on-site or off-site improvements proposed in the Statement of Record.

(b) Complete the following format (If the subdivision or common promotional plan contains, or will contain, 1000 or more lots, furnish this information in its entirety. If the subdivision or common promotional plan contains, or will contain, less than 1,000 lots, only paragraphs (b)(3)(iii) and (iv) of this section need be completed.)

(1) Estimated date for full completion of amenities

(2) Projected date for complete sell out of subdivision

(3) Cost and expense recap for lots included in this Statement of Record:

(i) Land acquisition cost or current fair market value of land.

(ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).

(iii) Estimated marketing and advertising costs.

(iv) Estimated sales commission.

(v) Interest (include cost in financing the land purchase, improvements, or other borrowings).

(vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).

(vii) Total.

(4) Total land sales revenue:

(i) Estimated total land sales income.

(ii) Estimated other income.

(iii) Total income.

(c) *Financial statements.* (1) Submit a copy of the developer's financial statements for the last full fiscal year. These statements shall be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, and shall be audited by an independent licensed public accountant. They shall include a balance sheet, a statement of profit and loss, a statement of changes in financial condition and a certified opinion by the accountant. The statements shall be no more than six months old on the date the Statement of Record is submitted.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d) *Annual report.* (1) Each year after the initial effective date, the developer shall submit a copy of its latest financial statements. These statements must meet the standards set out in § 1010.212(c)(1), unless the developer has qualified for an exception under § 1010.212(e), and must be submitted within 120 days after the close of the developer's fiscal year.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in § 1010.310(c)(7)(iii) may be furnished in lieu of this report.

(e) *Exceptions.* (1) If the developer does not have audited financial statements and the criteria in one of the following exceptions are met, statements need not be audited and certified but must meet all of the other requirements set forth in paragraphs (c)(1) and (2) of this section.

(2) The term ''conveys title free of any mortgage or lien'' in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

(i) *Deed* shall mean a warranty deed, or its equivalent, which conveys title free and clear of liens and encumbrances.

(ii) *Assurance of Title Agreement* shall mean a legal arrangement whereby the purchaser is guaranteed a deed upon payment of no more than the full purchase price of the lot (*e.g.* subdivision trust). In addition to a copy of any Assurance of Title Agreement, the Director may require additional documentation such as an attorney's opinion letter to assure that the purchaser's title is fully protected.

(iii) *Date of contract* shall mean the date on which the contract or agreement is signed by the purchaser.

(iv) *Escrow or trust account as to down payments and deposits* shall mean an account, established in accordance with local real estate laws or regulations, which assures the return to the purchaser of any monies paid in the event title is not delivered to the purchaser in accordance with the terms of the contract.

(3) The exceptions are:

(i) The aggregate sales price of all lots offered pursuant to a common promotional plan equals $500,000.00 or less; or

(ii) Each of the following conditions of paragraphs (e)(3)(ii)(A) and (B) of this section are met, plus the conditions of one of paragraphs (e)(3)(ii)(C), (D), or (E) of this section:

(A) Down payments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed which conveys title free of any mortgage or lien within 180 days of the signing of the contract. (In lieu of delivery of a deed, the developer may submit to ILSRP an Assurance of Title Agreement.)

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least $500,000 but less than $1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots in the Statement of Record are immediately usable for the purpose for which they are sold.

(E) (*1*) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in the Property Report and sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report, and;

(*2*) The developer has made financial arrangements, such as the posting of surety bonds (corporate bonds or individual notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract.

(f) *Newly-formed entity.* If the developer is newly formed or has not had any significant operating experience, an audited or unaudited balance sheet and statements of receipts and disbursements of funds may be submitted.

(g) *Use of parent company statements.* (1) If the developer is a subsidiary company and does not have audited financial statements, the Director may permit the use of the audited and certified statements of the parent company: *Provided,* That those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, the developer shall submit the following:

(i) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with § 1010.212(c).

(ii) A properly executed guaranty in a form acceptable to the Director.

(2) In cases described in paragraph (g)(1) of this section, the disclosure information required in § 1010.112 shall be appropriately amended to reference the parent company and not the developer and must include a statement to the effect that the developer's parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h) *Opinions.* If the accountant qualifies or disclaims his opinion, the Director may accept the statements and require such additional disclosure as the Director deems necessary in the public interest or for the protection of purchasers.

(i) *Copies for prospective purchasers.* Copies of the financial statements filed with the Statement of Record shall be made available to prospective purchasers upon request. A supply of the latest submitted statements shall be maintained at whatever place, or places, as is necessary to allow immediate delivery upon request by a prospective purchaser. These statements shall contain financial information only and shall not include any promotional material such as that usually set forth in annual reports.

(j) *Change from audited to unaudited statements.* (1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Director that it then qualifies for an exception from audited statements under paragraph (e)(3)(ii) of this section. For purposes of paragraph (e)(3)(ii)(C) of this section, the Director will consider the aggregate sales prices of only the lots yet to be sold, and may consider whether any additions to the subdivisions or reacquisitions of lots already sold would be likely to cause the dollar limits to be exceeded.

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than $1,500,000.00, and that it will not exceed this amount through further additions to the subdivision, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with ILSRP, and;

(iii) Any down payments or deposits are held in an escrow or trust account, or;

(iv) The developer then qualifies for exception (e)(3)(iii) or (iv) of this section.

(2) The Director may allow a developer, who has made sales prior to registration, to submit unaudited statements under the provisions of paragraph (j)(1)(i) of this section. The developer must demonstrate to the satisfaction of the Director that the acceptance of unaudited statements would not be a detriment to the public interest or to the protection of purchasers.

§ 1010.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in § 1010.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in § 1010.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

§ 1010.215 Subdivision characteristics and climate.

(a) Submit *two* copies of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Photo copies made by the developer are not acceptable. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer's proposed plans that includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other financial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

§ 1010.216 Additional information.

(a) *Property Owners' Association.* (1) If the association has been formed as a legal entity, submit a copy of the articles of association, bylaws or similar documents, and a copy of the charter or certificate of incorporation.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney's fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in § 1010.116(a) at the discretion of the Director.

(5) Submit a copy of any membership agreement or similar document.

(b) *Price range, type of sales and marketing.* (1) State the price range of lots in the subdivision.

(2) State the type of sales to be made, *i.e.,* contract for deed, cash, deed with security instrument, etc.

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;

(iii) Whether presentations will be made away from the immediate vicinity of the subdivision and/or if prospective purchasers will be furnished transportation from distant cities to the subdivision;

(iv) Whether mass mailing techniques will be used and gifts offered to those who respond.

(4) For any subdivision that meets any of the criteria in paragraphs (b)(4)(i) through (iii) of this section, submit a copy of any advertising or promotional material that is, or has been, used for the subdivision. Amendments to reflect changes in advertising or promotional material need be filed only when there

is a material change related to one of the above factors. Depending upon the content of the material submitted, the Director may require additional warnings in the Property Report portion. This requirement applies to any subdivision that:

(i) Mentions or refers to recreational facilities which are not disclosed in § 1010.114, or;

(ii) Promotes the sale of lots based on the investment potential or expected profits, or;

(iii) Contains information which is in conflict with that disclosed in this Statement of Record.

(c) *Violations and litigation.* (1) Submit a copy of the complaint(s), the answer(s) and the decision(s) for any litigation listed in § 1010.116(c).

(2) If it is indicated in § 1010.116(c) that the developer or any of the parties involved in the subdivision are, or have been, the subject of any bankruptcy proceedings, furnish a copy of the schedules of liabilities and assets (or a recap of those schedules); the petition number; the date of the filing of the petition; names and addresses of the petitioners, trustee and counsel; the name and location of the court where the proceedings took place and the status or disposition of the petition. Explain, briefly, the cause of the action.

(3) Furnish a copy of any orders issued in connection with any violations listed in § 1010.116(c).

(d) *Resale or exchange program.* (1) If it is stated in § 1010.116(d)(3) that there is an exchange program which provides sufficient lots to satisfy all requests for exchange, describe the method used to determine the number of lots required; state whether these lots have been reserved or set aside; whether additional lots will be provided if the lots available for exchange are exhausted and the source of any additional lots.

(e) *Unusual situations.* (1) *Foreign subdivisions.* If the subdivision is located outside the several States, the District of Columbia, the Commonwealth of Puerto Rico or the territories or possession of the United States, the Statement of Record shall be submitted in the English language and all supporting documents, including copies of any laws which restrict the ownership of land by aliens, shall be submitted in their original language and shall be accompanied by a translation into English.

§ 1010.219 Affirmation.

The affirmation set forth in section XXVIII of the appendix to this part: Affirmation of Senior Executive Officer shall be executed by the senior executive officer or a duly authorized agent:

§ 1010.310 Annual report of activity.

(a) As an integral part of the Statement of Record, the developer shall file with the Director an Annual Report of Activity on any initial or consolidated registration not under suspension. For this purpose, only one Annual Report of Activity will be expected for subdivisions on which developers have filed consolidations. For registrations certified by a state as provided for in § 1010.500, a developer need file only one Annual Report of Activity for any registration for which the ILSRP number is the same (alphabetic designators indicate that the registration has been treated as a consolidation).

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record.

(c) The report shall contain the following information:

(1) Subdivision name and address.

(2) Developer's name, address and telephone number.

(3) Agent's name, address and telephone number.

(4) Interstate Land Sales Registration number.

(5) The date on which the initial filing first became effective.

(6) The number of registered lots, parcels or units which are unsold as of the date on which the report is due.

(7) One of the following:

(i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record; or

(ii) A statement that the developer is still engaged in land sales activity at the subject subdivision, that material changes have occurred since the last effective date, and that corrected pages to the Property Report portion or Additional Information and Documentation portion of the Statement accompany the report; or

(iii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision, together with the reason the developer is no longer selling (*e.g.,* all lots sold to the public or the remaining lots sold to another developer, along with the date of sale and the new developer's name, address and telephone number). A request may be made that the Statement of Record be voluntarily suspended. The request should be submitted in duplicate and will become effective upon the counter-signature of the Director (or an authorized Designee) with the duplicate being returned to the developer.

(8) The report shall be dated and shall be signed by the senior executive officer of the developer on a signature line above his typed name and title. The senior executive officer's acknowledgement shall be attested to or certified by a notary public or similar public official authorized to attest or certify acknowledgements in the jurisdiction in which the report is executed.

(d) If the report indicates that there are 101 or more registered lots, parcels or units remaining for sale, the report shall be accompanied by an amendment fee in the amount and form prescribed in § 1010.35.

(e) Failure to submit the report when due shall be grounds for an action to suspend the effective Statement of Record.

Subpart C—Certification of Substantially Equivalent State Law

§ 1010.500 General.

(a) This subpart establishes procedures and criteria for certifying state land sale or lease disclosure programs and State state land development standards programs. The purpose of State Certification is to lessen the administrative burden on the individual developer, arising where there are duplicative state and federal Federal registration and disclosure requirements, without affecting the level of protection given to the individual purchaser or lessee. If the Director determines that a state has adopted and is effectively administering a program that gives purchasers and lessees the same level of protection given to them by the Interstate Land Sales Registration Program, then the Director shall certify that state. Developers who accomplish an effective registration with a state in which the land is located after the Director has certified the state may satisfy the registration requirements of the Director by filing with the Director materials designated by agreement with certified states in lieu of the federal Federal Statement of Record and Property Report.

(b) A state that is certified by the Director shall be known as the situs certified state for all land located within its borders.

(c) After a developer is effectively registered with the Director through a certified state, the Director has the same authority over that developer as the Director has over developers who file directly with the Director. This includes the authority to subpoena information

and to examine, evaluate and suspend a developer's registration under sections 1407(d) and (e) of the Act and § 1010.45(b)(1) and (b)(2) of these regulations.

(d) The prohibitions against the use of the Property Report contained in § 1010.29 apply to state disclosure materials and substantive development standards. In addition, for purposes of this paragraph, references made to the Director, ILSRP and the Bureau in § 1010.29 will include a reference to the equivalent state officer or agency.

(e) The Purchaser's Revocation Rights, Sales Practices and Standards rules contained in part 1011 of these regulations apply to developers who register with the Director through certified States. All of the rules in part 1011 apply, excepting the disclaimer statement in § 1011.50(a) which is modified to read as follows: ''Obtain the Property Report or its equivalent, required by Federal and State law and read it before signing anything. No Federal or State agency has judged the merits or value, if any, of this property.''

(f) Developers are obliged to pay filing fees as set forth in § 1010.35 of this part.

§ 1010.503 Notice of certification.

(a) If the Director determines that a state qualifies for certification under § 1010.501(a) or (b), the Director shall so notify the state in writing. The state will be effectively certified under the section and as of the date specified in the notice.

(b) If the Director determines that a state does not meet the standards for certification, the Director shall so notify the state in writing. The notice will specify particular changes in state law, regulations or administration that are needed to obtain certification. The Director shall not be bound in advance to certify a state that makes the suggested changes if other deficiencies become apparent at a later time.

(c) The Director's final determination to accept or reject a State's Application for Certification of Land Sales Program shall be published in the **Federal Register.**

(d) A state's certification will remain in effect until it is voluntarily suspended by the state or withdrawn by the Director. A state can voluntarily suspend its certification by notifying the Director in writing. The suspension will take effect as of the date and time specified in the notice to the Director, or upon receipt by the Director if no date is specified. The Director may withdraw certification as provided in § 1010.505.

§ 1010.504 Cooperation among certified states and between certified states and the Director.

(a) By filing an Application for Certification of State Land Sales Program pursuant to § 1010.502, a state agrees that, if it is certified by the Director, it will:

(1) Accept for filing and allow to be distributed as the sole disclosure document, a disclosure document currently in effect in the situs certified state. Only those documents filed with the situs state after certification by the Director must automatically be accepted by other certified states;

(2) Certify copies of all disclosure documents, amendments and consolidations filed with it by developers of land located within its borders for and as needed by developers required to submit certified copies to the Director and all other certified states. The certification shall indicate whether the documents are currently in effect. The certification should be in the format set forth in section XXIX of the appendix to this part: Form for Certification for Disclosure Documents.

(3) Assist and cooperate with the Director and other certified states by requiring that developers of land within its borders amend disclosure documents if any change occurs in any representation of material fact required to be stated in the disclosure documents, including a change resulting from the developer's compliance with the requirements of the law in another certified state. The state shall require developers to send certified copies of the amended documents to the Director and requesting certified states. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the situs certified state authorities within 15 days of the date on which the developer knows, or should have known, of such change. Certified copies of the disclosure documents shall be submitted by the developer to the Director and the other certified states within 15 days after it becomes effective under the situs certified state laws.

(4) Continue to effectively operate its Land Sales Program as that Program is described in the Application for Certification and as it was certified by the Director.

(5) Assist and cooperate with the Director by monitoring the sales practices of developers registered with it directly or through another certified state, and by reporting to the Director any violations of the Act, including but not limited to the required contract provisions, revocation rights and anti-fraud provisions of 15 U.S.C. 1703, or the regulations.

(b) A state required to accept the disclosure documents of another situs certified state pursuant to paragraph (a)(1) of this section, may, in its discretion, require the developer to furnish it with copies certified pursuant to paragraph (a)(2) of this section.

(c) No state shall be prevented from establishing substantive or disclosure requirements which exceed the federal Federal standard provided that such requirements are not in conflict with the Act or these regulations. For example, a certified state may impose additional disclosure requirements on developers of land located within its borders but may not impose additional disclosure requirements on developers whose disclosure documents it is required to accept pursuant to paragraph (a)(1) of this section. However, a certified state may impose additional nondisclosure requirements on out of state developers even though the developer is registered in the certified state in which the land is located.

(d) After a developer is effectively registered with a certified state through a situs certified state, either or both certified states may exercise full enforcement authorities and powers over that developer according to applicable law and regulations.

(e) The Director shall cooperate with the certified states by offering a forum for nonbinding arbitration of disputes between two or more certified States arising out of the State Certification Program.

§ 1010.505 Withdrawal of State state certification.

(a) The Director shall periodically review the laws, regulations and administration thereof, of a certified state. If the Director finds that, taken as a whole, the laws, regulations or administration thereof, no longer meet the requirements of subpart C, then the Director may issue a notice to withdraw the certification of that state.

(b) The notice of proceedings to withdraw a state's certification will be issued to the state by the Director pursuant to § 1012.236. The Director may, after notice and after an opportunity for a hearing, pursuant to § 1012.237, issue an order withdrawing certification. In the event that a withdrawal order is issued, the order shall remain in effect until the state has amended its laws, regulations or the administration thereof or has otherwise complied with the requirements of the order. When the state has complied with the requirements of the order, the Director shall so declare and the

withdrawal order shall cease to be effective.

(c) Withdrawal orders issued pursuant to this subsection will be effective as of the date the order is received by the state. The withdrawal order shall be published in the **Federal Register.**

(d) The rules of 12 CFR part 1080, unless otherwise specified in 12 CFR part 1012, subpart D, will generally apply to hearings on withdrawal of a state's certification.

§ 1010.506 State/Federal filing requirements.

(a)(1) If the Director has certified a state under § 1010.501, the Director shall accept for filing disclosure materials or other acceptable documents which have been approved by the certified state within which the subdivision is located. Only those filings made by the developer with the state after the state was certified by the Director shall be automatically accepted by the Director.

(2) Retroactive application of the effectiveness of state's certification to a specified date may be granted on a state-by-state basis, where the Director determines that retroactive application will not result in automatic federal Federal registration of any state filing that has not met the requirements of the certified state laws.

(b) For a developer to be registered with the Director, the developer shall file with the Director a state certified copy of the Property Report or its equivalent, and any other documentation as stipulated in the Director's Notice of Certification to the state.

(c) The documents and materials filed under paragraph (b) of this section will be automatically effective as the Federal Statement of Record and Property Report after these materials and the proper filing fee have been received by the Director.

(d) The Director has authority pursuant to § 1010.45(b)(1) and (b)(2) to suspend individual filings which fail to meet the requirements of the certified state's law or regulations or the standards in the certification agreement whether or not the state agency has initiated a similar action.

(e)(1) State accepted materials filed with the Director pursuant to this section must be amended to reflect any amendment to such materials made effective by the state. All amendments to such materials must be submitted to the Director within 15 days after becoming effective under the applicable state laws. Amendments are automatically effective upon their receipt by the Director and the provisions of § 1010.45(b)(1) and (2) apply to amendments filed under this section.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the material which is being amended, and;

(ii) A signed state acceptance certification substantially the same as that required by § 1010.504(a)(2).

(f) If a certified state suspends the registration of a particular subdivision for any reason, the subdivision's federal Federal registration with the Director shall be automatically suspended as a result of the state action. No action need be taken by the Director to effect the suspension.

(g) A state is certified only with regard to land located within the state borders. The Director is not required to accept filings which have been accepted by a certified state if the land which is the subject of the filing is not located within that certified state. For example, if State A is certified by the Director and State B is not, the Director is not required to accept filings from State B simply because State A accepts filings from State B.

§ 1010.507 Effect of suspension or withdrawal of certification granted under § 1010.501(a): Full disclosure requirement.

(a) If a state certified under § 1010.501(a) suspends its own certification or has its certification withdrawn under § 1010.505, the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall remain in effect unless otherwise suspended by the Director.

(b) In the event that there is a change in a material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

§ 1010.508 Effect of suspension of certification granted under § 1010.501(b): Sufficient protection requirement.

(a) If a state certified under § 1010.501(b) suspends its own certification or has its certification withdrawn under § 1010.505, the effectiveness of the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall terminate ninety (90) days after the notice of withdrawal order is published in the **Federal Register** as provided in § 1010.505(c).

(b) At the end of the ninety day period, or during the ninety day period in the event that there is a change in material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

§ 1010.552 Previously accepted state filings.

(a) Materials filed with a state and accepted by the HUD Secretary as a Statement of Record prior to January 1, 1981, pursuant to 24 CFR 1010.52 through 1010.59 (as published in the **Federal Register** on April 10, 1979) may continue in effect. However, developers must comply with the applicable amendments to the Federal Act and the regulations thereunder. In particular, see §§ 1010.558 and 1010.559, which require that the Property Report and contracts or agreements contain notice of purchaser's revocation rights. In addition see § 1011.15(f), which provides that it is unlawful to make any representations with regard to the developer's obligation to provide or complete roads, water, sewers, gas, electrical facilities or recreational amenities, unless the developer is obligated to do so in the contract.

(b) If any such filing becomes inactive or suspended under the laws of the state, the registration with the Director shall be ineffective from that time.

(c) Such Statement of Record may be suspended pursuant to § 1010.45.

(d) The Director may refuse to accept any particular filing under this section when it is determined that acceptance is not in the public interest.

(e) The Director may require such changes, additional information, documents or certification as the Director determines to be reasonably necessary or appropriate in the public interest.

§ 1010.556 Previously accepted state filings—amendments and consolidations.

(a) *Amendments.* (1) *General requirements.* State accepted materials, filed with the Director pursuant to § 1010.552, shall be amended to reflect any amendment to such materials made effective by the state or any change of

a material fact regarding the subdivision. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the state authorities within 15 days of the date on which the developer knows, or should have known, of such change and to the Director within 15 days after it becomes effective under the applicable State laws. However, such amendment shall not be effective as a Federal registration until the Director has determined that the amendment meets all applicable requirements of these regulations.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the Statement of Record which is being amended, and;

(ii) All amended pages of the state accepted materials filed with the Director. These pages shall be copied together with their amendments. Each such page shall have its date of preparation in the lower right hand corner, and;

(iii) A signed state acceptance certification, and;

(iv) The appropriate fees as indicated in § 1010.35.

(b) *Consolidations.* (1) *When consolidations allowed.* If lots are to be registered pursuant to § 1010.552 which are in the same common promotional plan with other lots already registered with the Director, then new consolidated state accepted materials including such lots may be filed with the Director as a Statement of Record following the format of the previously accepted filing.

(2) Consolidated Statements of Record shall include or be accompanied by:

(i) State accepted consolidation materials which are also acceptable to the Director as a Statement of Record (state property report inclusive). These state accepted consolidation materials shall cover all lots previously registered in the common promotional plan except those deleted pursuant to other provisions in these regulations. These materials shall also include information and items required for state accepted materials filed as an initial registration Statement of Record, except that, supporting documentation in materials previously made effective by the Director for other lots in the subject common promotional plan may be included incorporated by reference into the new consolidation materials submitted as a Statement of Record. However, such documentation may be incorporated by reference included only if it is applicable to the new consolidated lots as well as to the previously registered lots.

(ii) A signed state acceptance certification.

(iii) The appropriate fees as indicated in § 1010.35.

(c) *Effective date; state filing.* The effective dates of state materials filed as amendments and consolidated Statements of Record shall be determined in accordance with the provisions of § 1010.21.

§ 1010.558 Previously accepted state filings—notice of revocation rights on property report cover page.

(a)(1) The cover page on Property Reports for filings made with the Director pursuant to § 1010.552 shall be prepared in accordance with § 1010.105 and shall include the paragraphs set forth in section XXX of the appendix to this part: Language to be Included on Property Report Cover Page.

(2) If the purchaser is entitled to a longer revocation period by operation of State law, that period becomes the Federal revocation period and the cover page must reflect the longer period, rather than the seven days.

(b)(1) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(2) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(3) The contract provisions are:

(i) A legally sufficient and recordable lot description, and;

(ii) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to remedy the default or breach within 20 days of the notice; and

(iii) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15 percent of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15 percent of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(4) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: ''Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing.''

§ 1010.559 Previously accepted state filings—notice of revocation rights in contracts and agreements.

(a)(1) All contracts or agreements, including promissory notes used in sale of lots for filings made with the Director pursuant to § 1010.552, must contain the language set forth in section XXXI of the appendix to this part: Notice of Revocation Rights in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures:

(2) If the purchaser is entitled to a longer revocation period by operation of State law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the longer period, rather than the seven days. The language shall be consistent with that shown on the Cover Page (see § 1010.558).

(b) The above revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

Appendix A: to Part 1010: Standard and Model Forms and Clauses

I. *Forms for Developer's Affirmation for Land Sale*—§ 1010.13(a)(9)

Developer's Name _____
Developer's Address _____
Purchaser's Name(s) _____
Purchaser's Address(es) (including county)
Name of Subdivision _____
Legal Description of Lot(s) Purchased _____

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 12 CFR 1010.13 have been met in the sale or lease of the lot(s) described above.

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

(Date) _____
(Signature of Developer or Authorized Agent) _____
(Title) _____

II. *Language Notifying Buyer of Option to Cancel Contract*—§ 1010.15(b)(5)(i)

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.

If you did not receive a Lot Information Statement prepared

pursuant to the rules and regulations of the Bureau of Consumer Financial Protection in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

III. *Sample Lot Information Statement and Sample Receipt*—§ 1010.15(b)(11)

Sample Format

(Use of the following headings and first paragraph are mandatory.)

Lot Information Statement

Important: Read Carefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right To Cancel

(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1010.15(b)(5)(i)).

Risk of Buying Land

(Under this heading the developer is to list the following information:)

There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. Do not expect all land to automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

Developer Information

(Under this heading the developer is to list the following information:)

Developer's Name: _____
Address: _____
Telephone Number: _____

Lot Information

(Under this heading the developer is to list the following information:)

Lot Location: _____

(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits

(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information).

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:

	Name, address and telephone number of	
	Governmental agency	Supplier
Water Sewer Electricity		

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Office of Nonbank Supervision, Interstate Land Sales Registration Program, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

(The Receipt is to be in the following form:)

Sample Receipt for Lot Information Statement

Purchaser (print or type): _____
Date: _____
Signature of purchaser: _____
_____
Street Address: _____
City: _____
State: _____
Zip: _____
Name of salesperson (print or type): _____
Signature of salesperson: _____

IV. *Request for Multiple Site Subdivision Exemption*—§ 1010.15(c)(1)

Request for Multiple Site Subdivision Exemption

Developer:

Name: _____
Address: _____
Telephone No.: _____

Agent:

Name: _____
Address: _____
Telephone No.: _____

(Insert a general description of the developer's method of operation.)

I affirm that I am, or will be, the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 12 CFR 1010.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date: _____
Signature: _____
Title: _____

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

V. *Request for Regulatory Exemption Order*—§ 1010.16(c)

REQUEST FOR EXEMPTION ORDER

Subdivision _____
Location (including county) _____
Developer _____
Address _____
Authorized Agent or President of Developer
_____
Address _____
Number of Lots Subject to Exemption Request _____
Description of Lots (list lot and block number or other identifying designation) _____
_____

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the

time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement.

I further affirm that the statements contained in all documents submitted with the request for an exemption order are true and complete.

_____
(Date)

_____
(Signature of Developer, Owner or Authorized Agent)

_____
(Title)

WARNING: Section 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

VI. *Developer's Affirmation for Advisory Opinion*—§ 1010.17(b)(3)

Developer's Affirmation

Name of Subdivision _____
Location (Including County and State) _____
Name of Developer _____
Address of Developer _____
Name of Agent _____
Address of Agent _____
Number of Lots in Subdivision _____
Number of Acres in Subdivision _____

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement.

I further affirm that the statements contained in all documents submitted with the request for an Advisory Opinion are true and complete.

_____
(Date)

_____
(Signature)

_____
(Title);

WARNING: 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

VII. *Initial and Consolidated Registration Fee Schedule*—§ 1010.35(b)

Number of lots	Fees
200 or fewer lots	$800
201 or more lots	1,000

VIII. *Property Report for Statement of Record*—§ 1010.100(b)

Property Report
Heading and Section Number

Cover Sheet 1010.105
Table of Contents 1010.106
Risks of Buying Land, Warnings 1010.107
General Information 1010.108
Title and Land Use 1010.109
(a) General Instructions
(b) Method of Sale
(c) Encumbrances, Mortgages and Liens
(d) Recording the Contract and Deed
(e) Payments
(f) Restrictions
(g) Plats, Zoning, Surveying, Permits, Environment
Roads 1010.110
Utilities 1010.111
(a) Water
(b) Sewer
(c) Electricity
(d) Telephone
(e) Fuel or other Energy Source
Financial Information 1010.112
Local Services 1010.113
Recreational Facilities 1010.114
Subdivision Characteristics and Climate 1010.115
(a) General Topography
(b) Water Coverage
(c) Drainage and Fill
(d) Flood Plain
(e) Flooding and Soil Erosion
(f) Nuisances
(g) Hazards
(h) Climate
(i) Occupancy
Additional Information 1010.116
(a) Property Owners' Association
(b) Taxes
(c) Violations and Litigation
(d) Resale or Exchange Program
(e) Unusual Situations
1. Leases
2. Foreign Subdivision
3. Time Sharing
4. Membership
(f) Equal Opportunity in Lot Sales
(g) Listing of lots
Cost Sheet 1010.117
Receipt, Agent Certification and Cancellation Page 1010.118

ADDITIONAL INFORMATION AND DOCUMENTATION

General Information 1010.208
Title and Land Use 1010.209
Roads 1010.210
Utilities 1010.211
Financial Information 1010.212
Recreational Facilities 1010.214
Subdivision Characteristics 1010.215
Additional Information 1010.216
Affirmation 1010.219

The Bureau's OMB control number for this information collection is: 3170–0012.

IX. *Sample Page for Statement of Record*—1010.102(e)

SAMPLE PAGE

ROADS

Here we discuss the roads that lead to the subdivision, those within the subdivision and the location of nearby communities.

ACCESS TO THE SUBDIVISION.

County road #43 leads to the subdivision. It has two lanes and the width of the wearing surface is 22 feet. It's paved with a macadam surface.

This road is maintained by Bottineau County with County funds. No improvements are planned at this time.

ACCESS WITHIN THE SUBDIVISION.

The roads within the subdivision will be located on rights of way dedicated to the public.

We are responsible for constructing the interior roads. There will be no additional cost to you for this construction.

WE HAVE NOT SET ASIDE ANY FUNDS IN AN ESCROW OR TRUST ACCOUNT OR MADE ANY OTHER FINANCIAL ARRANGEMENTS TO ASSURE COMPLETION OF THE ROADS, SO THERE IS NO ASSURANCE WE WILL BE ABLE TO COMPLETE THE ROADS.

At present, the roads are under construction and do not provide access to the lots in Units 2 and 3 during wet weather. The succeeding chart describes their present condition and estimated completion dates.

UUnit	Estimated starting date (month and year)	Percentage of construction now complete	Estimated completion date (month and year)	Present surface	Final surface
1	February 2010	50	December 2010	Gravel	Asphalt.
2	August 2010	0	June 2011	Dirt	Do.

UUnit	Estimated starting date (month and year)	Percentage of construction now complete	Estimated completion date (month and year)	Present surface	Final surface
3	April 2011	0	October 2011	None	Do.

X. *Language for Warning on Cover Page of Property Report*—§ 1010.105(c)

This Report is prepared and issued by the developer of this subdivision. It is *not* prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision _____
Name of Developer _____
Date of This Report _____

XI. *Sample Entry in Table of Contents for Statement of Record*—§ 1010.106(a)

Title and Land Use # Page #
Method of Sale
Encumbrances, Mortgages and Liens
Recording the Contract and Deed
Payments
Restrictions on the Use of Your Lot
Plat Maps, Zoning, Surveying, Permits and Environment

XII. *Required Language for Risks of Buying Land*—§ 1010.107(a)

(1) The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

(2) Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed. This paragraph may be omitted if all improvements have been completed or if no improvements are proposed.

(3) Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

(4) Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size, planning and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

(5) In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

XIII. *Format for General Information*—§ 1010.108

''This Report covers __ lots located in _____ County, (*State*). See Page __ for a listing of these lots. It is estimated that this subdivision will eventually contain __ lots.''

''The developer of this subdivision is:

_____
(Developer's Name)

_____
(Developer's Address)

_____
(Developer's telephone number)

''Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above.''

XIV. *Paragraphs to be included in the General Report—Title to the Property and Land Use*—§ 1010.109(a)(1)

''A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but doesn't give you legal title. You won't have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title.''

''Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.''

XV. *Statement on Release Provisions*—§ 1010.109(c)(2)(i)(A)

''The release provisions for the (indicate all or particular lots) have not been recorded. Therefore, they may not be honored by subsequent holders of the mortgage. If they are not honored, you may not be able to obtain clear title to a lot covered by this mortgage until we have paid the mortgage in full, even if you have paid the full purchase price of the lot. If we should default on the mortgage prior to obtaining a release of your lot, you may lose your lot and all monies paid.''

XVI. *Warning for Release Provisions*—§ 1010.109(c)(2)(i)(C)(*1*)

''The (state type of encumbrance) on (indicate all or particular lots) in this subdivision does not contain any provisions for the release of an individual lot when the full purchase price of the lot has been paid. Therefore, if your lot is subject to this (state type of encumbrance), you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid.''

XVII. *Method and Purpose of Recording Warning*—§ 1010.109(d)(1)(iv)

''Unless your contract or deed is recorded you may lose your lot through the claims of subsequent purchasers or subsequent creditors of anyone having an interest in the land''.

XVIII. *Escrow Statement—Disclosure* § 1010.109(e)(1)

''You may lose your (indicate deposit, down payment and/or installment payments) on your lot if we fail to deliver legal title to you as called for in the contract, because (they are/it is) not held in an escrow account which fully protects you.''

XIX. *Road Chart*—§ 1010.110(b)(3)

UUnit	Estimated starting date (month/year)	Percentage of construction now complete	Estimated completion date (month/year)	Present surface	Final surface

XX. *Nearby Communities Chart*—§ 1010.110(b)(6)

Nearby Communities ....
Population ....
Distance Over Paved Roads ....
Distance Over Unpaved Roads ....
Total.

XXI. *Water Chart Form*—§ 1010.111(a)(1)(ii)(B)

WATER

UUnit	Estimated starting date (month and year)	Percentage of construction now complete	Estimated service availability date (month and year)

XXII. *Comfort Station Chart*—§ 1010.111(b)(1)(ii)

Comfort Stations

Unit _____
Estimated Starting Date (month-year) _____
Percentage of Construction now complete __
Estimated Service Availability Date (month and year) _____

XXIII. *Sewer Chart*—§ 1010.111(b)(1)(iii)(B)

Sewer

Unit Estimated Starting Date (month/year) __
Percentage of Construction now complete __
Estimated Service Availability Date (month/year) _____

XXIV. Electric Service Chart—§ 1010.111(c)(2)

ELECTRIC SERVICE

UUnit	Estimated starting date (month and year)	Percentage of construction complete	Estimated service availability date (month and year)

XXV. *Recreational Facility Chart*—§ 1010.114(b)

Facility	Percentage of construction now complete	Estimated date of start of construction (month/year)	Estimated date available for use (month/year)	Financial assurance of completion	Buyer's annual cost or assessments

XXVI. *Cost Sheet Format*—§ 1010.117(a)

Cost Sheet

In addition to the purchase price of your lot, there are other expenditures which must be made.

Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price

Cash Price of lot ..... $
Finance Charge ..... $
Total ..... $

Estimated one-time charges

1. Water connection fee/installation or private well. $
2. Sewer connection fee/installation of private on-site sewer system. $
3. Construction costs to extend electric and/or telephone services. $
4. Other (Identify) ..... $
..... $
Total of estimated sales price and one-time charges. $

Estimated monthly/annual charges, exclusive of utility use fees

1. Taxes—Average unimproved lot after sale to purchaser. $
2. Dues and assessments ..... $

The information contained in this Property Report is an accurate description of our subdivision and development plans.

_____
Signature of Senior Executive Officer

XXVII. *Sample Receipt, Agent Certification and Cancellation Page*—§ 1010.118(a)

Receipt, Agent Certification and Cancellation Page purchaser receipt
Important: Read Carefully

Name of subdivision _____
ILSRP number _____
Date of report _____

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by _____
Date _____
Street address _____
City _____
State _____
Zip _____

If any representations are made to you which are contrary to those in this Report, please notify the:

Bureau of Consumer Financial Protection

1700 G Street NW

Washington, DC 20006

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot _____

Block _____

Section _____

Name of salesperson _____

Signature _____

Date _____

Purchase Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision _____

Date of contract _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature _____

Date _____

XXVIII. *Affirmation of Senior Executive Officer*—§ 1010.219

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent); and,

That the statements contained in this Statement of Record and any supplement hereto, together with any documents submitted herein, are full, true, complete, and correct; and,

That the developer is bound to carry out the promises and obligations set forth in this Statement of Record and Property Report or I have clearly stated who is or will be responsible; and

That the fees accompanying this submission are in the amount required by the rules and regulations of the Bureau of Consumer Financial Protection.

_____

(Date)

_____

(Signature)

_____

(Corporate seal if applicable)

_____

(Title)

WARNING: 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

XXIX. *Form for Certification for Disclosure Documents*—§ 1010.504(a)(2)

The (indicate the State Department of Real Estate or other appropriate entity) has reviewed the attached materials and finds they are true copies of (1) the (indicate Property Report or other similar state accepted document or amendment to such document) for (indicate the name of the subdivision), made effective by the state of _____ on _____ (give date) and still in effect; and (2) the supporting documentation upon which such (indicate the document or amendment) is based.

_____

Signature

XXX. *Language to be Included on Property Report Cover Page*—§ 1010.558(a)(1)

''If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller anytime before midnight of the seventh day following the signing of the contract or agreement.

''If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement anytime within two years from the date of signing.''

XXXI. *Notice of Revocation Rights*—§ 1010.559(a)(1)

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, this contract or agreement may be revoked at your option for two years from the date of signing.

■ 2. Add Part 1011 to read as follows:

PART 1011—PURCHASERS' REVOCATION RIGHTS, SALES PRACTICES AND STANDARDS (REGULATION K)

Subpart A—Purchasers' Revocation Rights

Sec.
1011.1 General.
1011.2 Revocation regardless of registration.
1011.4 Contract requirements and revocation.
1011.5 Reimbursement.

Subpart B—Sales Practices and Standards

1011.10 General.
1011.15 Unlawful sales practices—statutory provisions.
1011.20 Unlawful sales practices—regulatory provisions.
1011.25 Misleading sales practices.
1011.27 Fair housing.
1011.30 Persons to whom subpart B is inapplicable.

Subpart C—Advertising Disclaimers

1011.50 Advertising disclaimers; subdivisions registered and effective with the Bureau.

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Subpart A—Purchasers' Revocation Rights

§ 1011.1 General.

The purpose of this subpart A is to elaborate on the revocation rights in 15 U.S.C. 1703, by enumerating certain conditions under which purchasers may exercise revocation rights. Generally, whenever revocation rights are available, they apply to promissory notes, as well as traditional agreements.

§ 1011.2 Revocation regardless of registration.

All purchasers have the option to revoke a contract or lease with regard to a lot not exempt under §§ 1010.5 through 1010.11 and 1010.14 until midnight of the seventh day after the day that the purchaser signs a contract or lease. If a purchaser is entitled to a longer revocation period under state law, that period is deemed the Federal revocation period rather than the 7 days, and all contracts and agreements (including promissory notes) shall so state.

§ 1011.4 Contract requirements and revocation.

(a) In accordance with 15 U.S.C. 1703(d)(3), the refund to the purchaser is calculated by subtracting from the amount described in 15 U.S.C. 1703(d)(3)(B), the greater of:

(1) Fifteen percent of the purchase or lease price of the lot (excluding interest

owed) at the time of the default or breach of contract or agreement; or

(2) The amount of damages incurred by the seller or lessor due to the default or breach of contract.

(b) For the purposes of this section:

Damages incurred by the seller or lessor means actual damages resulting from the default or breach, as determined by the law of the jurisdiction governing the contract. However, no damages may be specified in the contract or agreement, except a liquidated damages clause not exceeding 15 percent of the purchase price of the lot, excluding any interest owed.

Purchase price means the cash sales price of the lot shown on the contract.

(c) The contractual requirements of 15 U.S.C. 1703(d) do not apply to the sale of a lot for which, within 180 days after the signing of the sales contract, the purchaser receives a warranty deed or, where warranty deeds are not commonly used, its equivalent under state law.

§ 1011.5 Reimbursement.

If a purchaser exercises rights under 15 U.S.C. 1703(b), (c), or (d), but cannot reconvey the lot in substantially similar condition, the developer may subtract from the amount paid by the purchaser, and otherwise due to the purchaser under 15 U.S.C. 1703, any diminished value in the lot caused by the acts of the purchaser.

Subpart B—Sales Practices and Standards

§ 1011.10 General.

Sales practices means any conduct or advertising by a developer or its agents to induce a person to buy or lease a lot. This subpart describes certain unlawful sales practices and provides standards to illustrate what other sales practices are considered misleading in light of certain circumstances in which they are made and within the context of the overall offer and sale or lease.

§ 1011.15 Unlawful sales practices—statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:

(a) The contractual covenant to provide or complete the services or amenities may be conditioned only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being included by reference must be specified in the contract of sale or lease.

§ 1011.20 Unlawful sales practices—regulatory provisions.

In selling, leasing or offering to sell or lease any lot in a subdivision it is an unlawful sales practice for any developer or agent, directly or indirectly, to:

(a) Give the Property Report to a purchaser along with other materials when done in such a manner so as to conceal the Property Report from the purchaser.

(b) Give a contract to a purchaser or encourage him to sign anything before delivery of the Property Report.

(c) Refer to the Property Report or Offering Statement as anything other than a Property Report or Offering Statement.

(d) Use any misleading practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or any other document used by the developer as a sales inducement.

(e) Refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(f) Use a Property Report, note, contract, deed or other document prepared in a language other than that in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(g) Deliberately fail to maintain a sufficient supply of restrictive covenants and financial statements or to deliver a copy to a purchaser upon request as required by §§ 1010.109(f), 1010.112(d), 1010.209(g), and 1010.212(i).

(h) Use, as a sales inducement, any representation that any lot has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities. The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

(i) Represent a lot as a homesite or building lot unless:

(1) Potable water is available at a reasonable cost;

(2) The lot is suitable for a septic tank operation or there is reasonable assurance that the lot can be served by a central sewage system;

(3) The lot is legally accessible; and

(4) The lot is free from periodic flooding.

§ 1011.25 Misleading sales practices.

Generally, promotional statements or material will be judged on the basis of the affirmative representations contained therein and the reasonable inferences to be drawn therefrom, unless the contrary is affirmatively stated or appears in promotional material, or unless adequate safeguards have been provided by the seller to reasonably guarantee the occurrence of the thing inferred. For example, when a lot is represented as being sold by a warranty deed, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser prior to conveyance. The following advertising and promotional practices, while not all inclusive, are considered misleading, and are used to evaluate a developer's or agent's representations in determining possible violations of the Act or regulations. In this section ''represent'' carries its common meaning.

(a) *Proposed improvements.* References to proposed improvements of any land unless it is clearly indicated that the improvements are only proposed or what the completion date is for the proposed improvement.

(b) *Off-premises representations.* Representing scenes or proposed improvements other than those in the subdivision unless

(1) It is clearly stated that the scenes or improvements are not related to the subdivision offered; or

(2) In the case of drawings that the scenes or improvements are artists' renderings;

(3) If the areas or improvements shown are available to purchasers, what

the distance in road miles is to the scenes or improvements represented.

(c) *Land use representations.* Representing uses to which the offered land can be put unless the land can be put to such use without unreasonable cost to the purchaser and unless no fact or circumstance exists which would prohibit the immediate use of the land for its represented use.

(d) *Use of ''road'' and ''street.''* Using the words ''road'' or ''street'' unless the type of road surface is disclosed. All roads and streets shown on subdivision maps are presumed to be of an all-weather graded gravel quality or higher and are presumed to be traversable by conventional automobile under all normal weather conditions unless otherwise shown on the map.

(e) *Road access and use.* Representing the existence of a road easement or right-of-way unless the easement or right-of-way is dedicated to the public, to property owners or to the appropriate property owners association.

(f) *Waterfront property.* References to waterfront property, unless the property being offered actually fronts on a body of water. Representations which refer to ''canal'' or ''canals'' must state the specific use to which such canal or canals can be put.

(g) *Maps and distances.* (1) The use of maps to show proximity to other communities, unless the maps are drawn to scale and scale included, or the specific road mileage appears in easily readable print.

(2) The use of the terms such as ''minutes away,'' ''short distance,'' ''only miles,'' or ''near'' or similar terms to indicate distance unless the actual distance in road miles is used in conjunction with such terms. Road miles will be measured from the approximate geographical center of the subdivided lands to the approximate downtown or geographical center of the community.

(h) *Lot size.* Representation of the size of a lot offered unless the lot size represented is exclusive of all easements to which the lot may be subject, except for those for providing utilities to the lot.

(i) *''Free'' lots.* Representing lots as ''free'' if the prospective purchaser is required to give any consideration whatsoever, offering lots for ''closing costs only'' when the closing costs are substantially more than customary, or when an additional lot must be purchased at a higher price.

(j) *Pre-development prices.* References to pre-development sales at a lower price because the land has not yet been developed unless there are plans for development, and reasonable assurance is available that the plans will be completed.

(k) *False reports of lot sales.* Repeatedly announcing that lots are being sold or to make repetitive announcements of the same lot being sold when in fact this is not the case.

(l) *Guaranteed refund.* Use of the word ''guarantee'' or phrase ''guaranteed refund'' or similar language implying a money-back guarantee unless the refund is unconditional.

(m) *Discount certificates.* The use of discount certificates when in fact there is no actual price reduction or when a discount certificate is regularly used.

(n) *Lot exchanges.* Representations regarding property exchange privileges unless any applicable conditions are clearly stated.

(o) *Resale program.* Making any representation that implies that the developer or agent will resell or repurchase the property being offered at some future time unless the developer or agent has an ongoing program for doing so.

(p) *Symbols for conditions.* The use of asterisks or any other reference symbol or oral parenthetical expression as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(q) *Proposed public facilities.* References to a proposed public facility unless money has been budgeted for construction of the facility and is available to the public authority having the responsibility of construction, or unless disclosure of the existing facts concerning the public facility is made.

(r) *Non-profit or institutional name use.* The use of names or trade styles which imply that the developer is a nonprofit research organization, public bureau, group, etc., when such is not the case.

§ 1011.27 Fair housing.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, *et seq.,* and its implementing regulations and guidelines apply to land sales transactions to the extent warranted by the facts of the transaction.

§ 1011.30 Persons to whom subpart B is inapplicable.

Newspaper or periodical publishers, job printers, broadcasters, or telecasters, or any of the employees thereof, are not subject to this subpart unless the publishers, printers, broadcasters, or telecasters:

(a) Have actual knowledge of the falsity of the advertisement or

(b) Have any interest in the subdivision advertised or

(c) Also serve directly or indirectly as the advertising agent or agency for the developer.

Subpart C—Advertising Disclaimers

§ 1011.50 Advertising disclaimers; subdivisions registered and effective with the Bureau.

(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement or Record is on file with the Director: ''Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.'' If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.

(b) If the advertising is of a classified type; is not more than five inches long and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.

(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than five inches long.

(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the Federal disclaimer, may combine the wording of the disclaimers. All of the wording of the Federal disclaimer must be included in the resulting combined disclaimer.

■ 3. Add Part 1012 to read as follows:

PART 1012—SPECIAL RULES OF PRACTICE (REGULATION J)

Subpart A—[Reserved]

Subpart B—Filing Assistance

Sec.

1012.30 Scope of this subpart.
1012.35 Prefiling assistance.
1012.40 Processing of filings.

Subpart C—[Reserved]

Subpart D—Adjudicatory Proceedings

1012.105–1012.200 [Reserved]
1012.205 Suspension notice prior to effective date.
1012.210 Hearings—suspension notice prior to effective date.
1012.215 Notice of proceedings subsequent to effective date.
1012.220 Hearings—notice of proceedings subsequent to effective date.
1012.225 Suspension order for failure to cooperate.

1012.230 Suspension order pending amendments.
1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.
1012.236 Notice of proceedings to withdraw a State's certification.
1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.
1012.238 Notices of proceedings to terminate exemptions.
1012.239 Hearings—notice of proceedings pursuant to exemptions.

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Subpart A—[Reserved]

Subpart B—Filing Assistance

§ 1012.30 Scope of this subpart.

This subpart applies to and governs procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§ 1012.35 Prefiling assistance.

Persons intending to file with the Bureau of Consumer Financial Protection, Office of Nonbank Supervision may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Office of Nonbank Supervision, Interstate Land Sales Registration Program, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

§ 1012.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Director by the Office of Nonbank Supervision, for determination of whether the criteria set forth in paragraphs (a)(1) through (3) of this section have been satisfied. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(1) Completeness of the statement

(2) Adequacy of the filing fee, and

(3) Adequacy of disclosure.

(b) Filings intended as Statements of Record but which do not comply in form with §§ 1010.105 and 1010.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Interstate Land Sales Registration Program, such filings and any moneys accompanying them may be immediately returned to the sender or after notification may be held pending the sender's appropriate response.

(c) Persons filing incomplete or inaccurate Statements of Record will be notified of the deficiencies therein by the Suspension Notice procedure described in § 1010.45(a) of this chapter.

Subpart C—[Reserved]

Subpart D—Adjudicatory Proceedings

§§ 1012.105–1012.200 [Reserved]

§ 1012.205 Suspension notice prior to effective date.

A suspension pursuant to § 1010.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under § 1010.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Director's requirements.

(c) A notice of the hearing rights of the developer under § 1012.210 and of the procedures for invoking those rights.

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1012.210 Hearings—suspension notice prior to effective date.

(a) A developer, upon receipt of a suspension notice issued pursuant to § 1010.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent's attorney conforming to the requirements of 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Director or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Director to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Director has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under § 1010.45(a) with respect to the same matter for which a suspension order under § 1010.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1012.215 Notice of proceedings subsequent to effective date.

A proceeding pursuant to § 1010.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under § 1010.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under § 1012.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result in an order suspending the Statement of Record.

§ 1012.220 Hearings—notice of proceedings subsequent to effective date.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to

§ 1010.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Director unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under § 1010.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§ 1012.225 Suspension order for failure to cooperate.

A suspension pursuant to § 1010.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under § 1012.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Director's requirements.

§ 1012.230 Suspension order pending amendments.

A suspension pursuant to paragraph (b)(3) of § 1010.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under § 1012.235 and of the procedure for invoking those rights.

§ 1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.

(a) A developer, upon receipt of a suspension order issued pursuant to § 1010.45(b)(2) or § 1010.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1012.236 Notice of proceedings to withdraw a State's certification.

A proceeding pursuant to § 1010.505 of this chapter is commenced by issuance and service of a notice which shall contain:

(a) An identification of the state certification to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination, pursuant to § 1010.505, that the State's laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of § 1010.501.

(c) A notice of hearing rights of the state under § 1012.237 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result in an order suspending the State's certification.

§ 1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.

(a) A State, upon receipt of a notice of proceedings issued pursuant to § 1010.505 of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section or failure to appear at a hearing duly scheduled shall result in an appropriate order under § 1010.505 of this chapter withdrawing the State's certification. Such order shall be effective as of the date of service or receipt.

§ 1012.238 Notices of proceedings to terminate exemptions.

A proceeding to terminate a self-determining exemption under § 1010.14 or an exemption order under § 1010.15 or § 1010.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1010.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1010.15 or § 1010.16, an identification of the exemption order to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination that further exemption from the registration and disclosure requirements is not in the public interest or that the sales or leases do not meet the requirements for exemption, or both.

(c) A notice of hearing rights of the respondent under § 1012.239 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result, in the case of a notice issued under § 1010.14, in an order terminating eligibility for the exemption, or, in the case of a notice issued under either § 1010.15 or § 1010.16, in an order terminating the exemption order.

§ 1012.239 Hearings—notice of proceedings pursuant to exemptions.

(a) A developer, upon receipt of a notice of proceedings issued under §§ 1010.14, 1010.15, and 1010.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming

to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties of their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section, or failure to appear at a duly scheduled hearing shall result in an appropriate order under § 1010.14, § 1010.15, or § 1010.16 of this chapter terminating the developer's exemption. The order shall be effective as of the date of service or receipt.

Dated: November 29, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31713 Filed 12–20–11; 8:45 am]

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H.J. Res. 94/P.L. 112–67

Making further continuing appropriations for fiscal year 2012, and for other purposes. (Dec. 16, 2011; 125 Stat. 769)

H.J. Res. 95/P.L. 112–68

Making further continuing appropriations for fiscal year 2012, and for other purposes. (Dec. 17, 2011; 125 Stat. 770)

S. 535/P.L. 112–69

Fort Pulaski National Monument Lease Authorization Act (Dec. 19, 2011; 125 Stat. 771)

S. 683/P.L. 112–70

Box Elder Utah Land Conveyance Act (Dec. 19, 2011; 125 Stat. 773)

S.J. Res. 22/P.L. 112–71

To grant the consent of Congress to an amendment to the compact between the States of Missouri and Illinois providing that bonds issued by the Bi-State Development Agency may mature in not to exceed 40 years. (Dec. 19, 2011; 125 Stat. 775)

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